

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	WC Docket No. 07-245
	)	
Implementation of Section 224 of the Act;	)	RM-11293
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	RM-11303
	)	
	)	

**COMMENTS OF ALABAMA POWER, GEORGIA POWER, GULF POWER, AND  
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**COMMENTS OF THE OPERATING COMPANIES**

**I. Introduction and Summary**

**A. The Operating Companies.**

Alabama Power Company ("Alabama Power"), Georgia Power Company ("Georgia Power"), Gulf Power Company ("Gulf Power") and Mississippi Power Company ("Mississippi Power") (collectively the "Operating Companies") are investor-owned electric utilities collectively serving 4.3 million customers throughout the Southeast and collectively owning 3.2 million distribution poles. Each of the Operating Companies is an operating subsidiary of Southern Company.

Alabama Power serves 1.4 million customers in the southern two-thirds of Alabama, and owns 1,396,297 distribution poles, which host 1.1 million third party attachments.<sup>1</sup> Georgia Power serves 2.25 million customers in 155 of 159 counties in Georgia and owns 1,394,613 distribution poles.<sup>2</sup> Of these poles, 816,691 are impacted by third party attachments.<sup>3</sup> Gulf

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<sup>1</sup> See Declaration of Donald W. Boyd ¶ 2, attached as Exhibit 1 ("Boyd Decl.").

<sup>2</sup> See Georgia Power Website, available at <<http://www.georgiapower.com/about/home.asp>> (last visited Mar. 6, 2008); also see Declaration of J. Darryll Wilson, attached as Exhibit 2 ("Wilson Decl.").



Power serves 427,000 customers in 10 counties in northwest Florida and owns 246,434 distribution poles.<sup>4</sup> Of these poles, 150,723 are impacted by third party attachments.<sup>5</sup>

Mississippi Power serves 184,937 customers in 23 counties in southeast Mississippi and owns 156,355 distribution poles.<sup>6</sup> Of these poles, 72,926 are impacted by third party attachments.<sup>7</sup>

The Operating Companies support the comments being filed by Edison Electric Institute (“EEI”) and also are filing comments through the Southern Company as part of a coalition of seven investor-owned electric utilities represented by the Hunton & Williams firm. The Operating Companies are filing this separate set of initial comments to emphasize certain points made in other filings, and to raise issues of specific importance to the Operating Companies which are not addressed in other comments.

#### **B. The Notice of Proposed Rulemaking.**

The Notice of Proposed Rulemaking (“NPRM”) set forth in WC Docket No. 07-245 arose out of two rulemaking petitions filed by the United States Telecom Association (“USTA”) and Fibertech Networks, LLC (“Fibertech”) on October 11, 2005 and December 7, 2005, respectively.<sup>8</sup> In those petitions, the USTA and Fibertech asked the Commission to review certain pole attachment rules and to re-evaluate the Commission’s implementation of certain aspects of Section 224 of the Pole Attachment Act, including whether the Commission should include incumbent local exchange carriers (“ILECs”) within its jurisdiction under Section 224.<sup>9</sup>

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<sup>3</sup> See Ex. 2 Wilson Decl. Att. 3.

<sup>4</sup> See Declaration of Ben A. Bowen ¶ 2, attached as Exhibit 3 (“Bowen Decl.”).

<sup>5</sup> See *id.* at ¶ 2.

<sup>6</sup> See Declaration of David B. Simmons ¶ 2, attached as Exhibit 4 (“Simmons Decl.”).

<sup>7</sup> See *id.* at ¶ 2.

<sup>8</sup> Petition for Rulemaking of The United States Telecom Association in RM-11293 (Oct. 11, 2005); Petition for Rulemaking of Fibertech Networks in RM-11303 (Dec. 7, 2005).

<sup>9</sup> See *id.*

Following the USTA and Fibertech petitions, other interested parties requested “rules” on specific pole attachment issues not expressly raised by Fibertech or the USTA. The Joint Cable Operators<sup>10</sup> asked the Commission to adopt a definition of the term “insufficient capacity” that would strip all meaning from Section 224(f)(2) of the Pole Attachment Act.<sup>11</sup> T-Mobile USA, Clearlinx Network Corporation and NextG Network, Inc. (“Wireless Telecom Carriers”) asked the Commission to adopt a presumption in favor of allowing pole top access for wireless attachments.<sup>12</sup>

Paragraph 37 of the NPRM broadly states: “In the record developed in response to the Fibertech Petition, a number of concerns have been expressed regarding terms and conditions of access to pole attachments, and we seek comment on these concerns.”<sup>13</sup> Paragraph 38 of the NPRM states: “[W]e seek comment on the practices of attachers that have the potential to adversely impact the safety and reliability of an integral component of our nation’s critical infrastructure, our electric power system.”<sup>14</sup> In response to these requests, and other open-ended

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<sup>10</sup> This group includes the Florida Cable & Telecommunications Association, the Cable Television Association of Georgia, the South Carolina Cable Association, the California Cable & Telecommunications Association, the Alabama Cable Telecommunications Association, and the Cable Telecommunications Association of Maryland, Delaware and the District of Columbia. See Joint Cable Operators’ Notice of Ex-Parte Presentation in RM-11303 at 2 (Mar. 21, 2006).

<sup>11</sup> Section 224(f)(2) of the Pole Attachment Act gives utilities the right to deny access “to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity....”. See 47 U.S.C. § 224(f)(2). The Joint Cable Operators, however, wish to strip utilities of any discretion in making the insufficient capacity determination by stating: “[O]nly where a third party attacher agrees that a taller pole, rearrangement, or other make-ready is not feasible could capacity be deemed ‘insufficient’ to justify a denial of access.” See Joint Cable Operators’ Notice of Ex-Parte Presentation in RM-11303 at 2 (Mar. 21, 2006).

<sup>12</sup> T-Mobile USA’s Notice of Ex-Parte Presentation in RM-11303 (Sept. 21, 2006); Reply Comments of Clearlinx Network Corporation, LLC in RM-11303 (Mar. 1, 2006); Comments of NextG Network, Inc. in RM-11303 (Jan. 30, 2006).

<sup>13</sup> *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, WC Docket No. 07-245, ¶ 36 (Nov. 20, 2007) (“NPRM”).

<sup>14</sup> *Id.* at ¶ 38.

requests,<sup>15</sup> the Operating Companies offer these Initial Comments, reserving the right to comment on other specific issues as necessary in reply comments.

**C. Summary of Comments.**

Because of the critical nature of third party pole attachments, the Operating Companies have carefully reviewed the NPRM. While the Operating Companies have vital interest in numerous issues set forth in the NPRM, the Operating Companies have decided to limit their comments to areas that are of the highest importance to the Operating Companies and that may not be adequately addressed by other commenting parties.

The Operating Companies' comments support the following conclusions:

- (i) Even if the Commission determines it has statutory authority to exercise jurisdiction over ILEC attachments on electric utility poles, it should decline to exercise that jurisdiction.
- (ii) The rate for broadband attachments should be the same rate applicable to telecom attachments so as to reduce the amount of subsidy from utility rate-payers to mandatory attacher shareholders;
- (iii) The Commission should establish a rebuttable presumption that all cable service attachments are being used to provide broadband service;
- (iv) The Commission's presumptions used to determine the telecom rate should be modified by lowering the average number of attaching entities to three for all poles;

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<sup>15</sup> See *id.* at ¶ 2 ("We initiate this rulemaking proceeding in order to consider comprehensively the appropriate changes, if any, to our implementation of section 224."); *Id.* at ¶ 3 (requesting that commenters assist "in compiling a record that will create, to the extent possible, a context into which [the Commission] can place the experiences of utilities, attachers, state commissions, end users, and others in the decade since the Commission began to implement the 1996 Act.").

(v) The Commission should allocate the safety space to communication attachers or to unusable space and not allocate this space to the utility;

(vi) The Commission should refrain from adopting a single wireless attachment rate because these attachments are so varied a single rate is impractical;

(vii) The Commission should reject the request by cable operators to define “insufficient capacity” in a way that would denude electric utilities of their clear rights under Section 224(f)(2);

(viii) In the interests of safety and reliability, the Commission should decline the request by wireless telecom carriers for a finding that wireless pole top access is presumptively reasonable;

(ix) The Commission should not allow attachers unfettered access to utility records because these records contain sensitive information concerning the nation’s electric utility infrastructure that could be used to undermine the safety and security of the public; and

(x) The Commission should defer to the states and individual utilities in matters of safety, reliability, and engineering, as illustrated by the recent Florida Storm Hardening proceedings.

**II. The Commission Should Not Take Jurisdiction Over Incumbent Local Exchange Carriers Under Section 224**

Even if the Commission finds that it has statutory authority to exercise jurisdiction over ILEC attachments on electric utility poles, it should decline to exercise that jurisdiction. If the Commission were to exercise such jurisdiction, it would throw hundreds of decades-old joint use

agreements into flux, and ultimately would shift the entire burden of pole infrastructure ownership to electric utilities and their customers. To the extent there have been any changes to the relationships between electric utilities and ILECs since 1996, those changes do not warrant the sea change proposed by USTA and its ILEC constituents.

EEI is filing detailed comments explaining that Congress explicitly excluded ILECs from coverage under Section 224 when it passed the Telecommunications Act of 1996. The Operating Companies adopt those comments and file these additional ILEC-related comments principally to address the fact questions raised in paragraph 15 of the NPRM,<sup>16</sup> and to place the traditional “joint use” relationship in its proper context – as an infrastructure cost-sharing agreement, not as a pole attachment rental agreement.

**A. Contrasting ILECs with Competitive Local Exchange Carriers.**

The petition for rulemaking filed by the USTA attempts to blur distinctions between ILECs and Competitive Local Exchange Carriers (“CLECs”) in an effort to persuade the Commission to favor ILECs with the telecom rate. ILECs and CLECs are apples and oranges, though. ILECs are the local telephone companies that provided (usually monopolistic) service in defined geographic areas leading up to the passage of the Telecommunications Act of 1996. They are the established,<sup>17</sup> dominant telephone service providers, and they own a significant network of poles. In fact, ILECs’ significant pole ownership, and the corresponding potential for

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<sup>16</sup> Paragraph 15 states in part:

[W]e seek comment regarding possible changes in bargaining power between electric utilities and incumbent LECs. . . . We also seek data that may shed light on how many poles incumbent LECs own or control compared with the number of poles owned or controlled by electric utilities. We seek comment regarding “joint use agreements,” including the number and percentage of poles that are owned or managed jointly...

NPRM at ¶ 15.

<sup>17</sup> Some ILECs have been in existence longer than their electric utility counterparties.

anticompetitive behavior by ILECs, were among the reasons the Pole Attachment Act defined ILECs as “utilities,” not as “attachers.”<sup>18</sup>

ILECs’ significant pole ownership also means that ILECs and electric utilities each have something that the other needs – poles. Because both ILECs and electric utilities own a significant network of poles, they have historically entered into “joint use agreements” to share infrastructure costs and to reduce pass-through costs to consumers. Given the joint nature of these agreements, there is a level of mutuality that exists between ILECs and electric utilities that cannot, as a practical matter, exist in relationships between CLECs and electric utilities. For example, many joint use agreements contain liability-sharing mechanisms because both parties (as pole owners) have significant stakes in the safety and reliability of the network.

CLECs, on the other hand, are relatively new market entrants. They generally do not own poles. In the rare cases where they do, their networks are neither sophisticated nor extensive. CLECs’ lack of pole ownership was the reason Congress granted CLECs attachment rights under Section 224 of the Pole Attachment Act.<sup>19</sup>

**B. Joint Use Agreements and the Relationships between ILECs and Electric Utilities.**

The Operating Companies have multiple joint use agreements with ILECs in their service areas. Alabama Power has 22 joint use agreements; Georgia Power has 30 joint use agreements;

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<sup>18</sup> See 47 U.S.C. § 224(a)(5) (“For purposes of this section, the term ‘telecommunications carrier’ does not include any incumbent local exchange carrier....”); *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-151 13 FCC Rcd 6777 at ¶ 5 (1998) (“Telecom Order”) (“The 1996 Act ... specifically excluded incumbent local exchange carriers (“ILECs”) from the definition of telecommunications carriers with rights as pole attachers. Because, for purposes of Section 224, an ILEC is a utility but is not a telecommunications carrier, an ILEC must grant other telecommunications carriers and cable operators access to its poles, even though the ILEC has no rights under Section 224 with respect to the poles of other utilities. This is consistent with Congress’ intent that Section 224 promote competition by ensuring the availability of access to new telecommunications entrants.”).

<sup>19</sup> See *id.*

Gulf Power has three joint use agreements; and Mississippi Power has one joint use agreement.<sup>20</sup>

Some of these agreements have been in place for more than 80 years.<sup>21</sup> None of the Operating

Companies jointly own poles with their ILEC partners.<sup>22</sup>

**1. *The Operating Companies' joint use agreements are based on parity.***

Most joint use agreements are premised on the concept of parity, meaning that ILECs and the Operating Companies share the cost of ownership either (a) relative to the space allocated on each pole, or (b) relative to the comparative network construction costs (or perhaps with some combination of the two serving as benchmarks for negotiated parity levels). In this sense, joint use agreements are not “rental” agreements because any revenue paid by one party to the other is designed to offset the additional costs of ownership (construction, maintenance, etc.) borne by the party owning poles in excess of contractual parity.

For example, suppose contractual parity is 55/45 (electric utility owns 55%; ILEC owns 45%) in a shared network of 1,000 poles. If the electric utility owns 600 poles, and the ILEC owns 400 poles, the ILEC would pay an annual rate (often called an “adjustment rate” to reflect the adjustment of ownership costs) for 50 poles. In other joint use relationships, there might be a per pole adjustment rate paid by each party to the other that results in no net money actually exchanging hands, so long as the parties are in parity. In these types of relationships, the adjustment rate paid by the electric utility to the ILEC is generally higher than the rate paid by the ILEC to the electric utility (to reflect either the differences in relative space allocated under the joint use agreement, or the differences in comparative network construction costs).

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<sup>20</sup> See Ex. 1 Boyd Decl. at ¶ 3; Ex. 2 Wilson Decl. at ¶ 16; Ex. 3 Bowen Decl. at ¶ 3; Ex. 4 Simmons Decl. at ¶ 4.

<sup>21</sup> See Ex. 1 Boyd Decl. at ¶ 3.

<sup>22</sup> See Ex. 1 Boyd Decl. at ¶ 4; Ex. 2 Wilson Decl. at ¶ 17; Ex. 3 Bowen Decl. at ¶ 4; Ex. 4 Simmons Decl. at ¶ 4.

Contractual parity in any given joint use relationship may vary, depending on the specific business needs and objectives of each party.

2. *The changes in relative ownership are neither significant nor the result of any unilateral action on the part of electric utilities.*

The contractual parity and actual relative ownership for each Operating Company and its largest ILEC counterparty is as follows:

Company	Contractual Parity <sup>23</sup>	Actual Relative Ownership <sup>24</sup>
Georgia Power	50/50	80.4/19.6
Alabama Power	56.9/43.1	74/26
Gulf Power	55/45	60/40
Mississippi Power	57.5/42.5	65.8/34.2

Relative ownership has changed little since 1996: Georgia Power's ratio with Bellsouth in 1996 was 78.3/21.7; Alabama Power's ratio with Bellsouth in 1996 was 68.2/31.8; Gulf Power's ratio with Bellsouth in 2001 was 58/42; and Mississippi Power's ratio with AT&T in 1994 was 56.2/43.8.<sup>25</sup> In some cases, ILECs actually own a higher percentage of jointly used poles than they did in 1996. For example, Alabama Power's second largest ILEC partner has experienced more than 1% increase in relative ownership since 1996.<sup>26</sup>

The reasons for any decline in ILECs' relative ownership have more to do with business choices being made by the ILECs than any fundamental change in the relationship between the parties. Most new ILEC plant is being built under ground, and whenever poles must be replaced,

<sup>23</sup> See Ex. 1 Boyd Decl. at ¶ 4; Ex. 2 Wilson Decl. at Att. 7; Ex. 3 Bowen Decl. at ¶ 4; Ex. 4 Simmons Decl. at ¶ 4.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See Boyd Decl. at ¶ 5.



electric utilities usually bear the burden of making the replacements. ILECs are setting fewer poles and forcing the Operating Companies to manage the lion's share of maintenance and repair work on the joint use networks, including emergency responses. For example, from January 2006 through January 2008, Mississippi Power made written requests to AT&T (its largest ILEC partner) to either set or replace 1,353 poles throughout their mutual service territories in an effort to work toward meeting contractual parity.<sup>27</sup> AT&T, however, accepted only 214 (less than 16%) of these requests.<sup>28</sup>

To the extent the ILECs' voluntary decisions have created any changes in relative ownership, the changes were created by the ILECs' own design and they are not justification for bringing ILECs within the rate protections of Section 224. This is particularly true considering that many of the Operating Companies' distribution systems were constructed to accommodate joint use agreements with ILECs. Imposing a single regulated rate structure would "pull the rug" from under the foundational principle on which the joint use networks were built, and create a windfall by allowing ILECs to avoid the expense of maintaining the joint use networks while simultaneously enjoying a lower, regulated attachment rate.

**3. *There have been no changes in bargaining power between electric utilities and ILECs.***

The NPRM seeks comment on "possible changes in bargaining power between electric utilities and incumbent LECs."<sup>29</sup> Despite any changes in relative ownership, ILECs have lost no bargaining power. The Operating Companies still need to attach to the significant number of poles that ILECs own in their respective service areas.<sup>30</sup> In fact, the Operating Companies

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<sup>27</sup> See Simmons Decl. at ¶ 8 & Ex. A.

<sup>28</sup> See *id.*

<sup>29</sup> NPRM at ¶ 15.

<sup>30</sup> See Ex. 1 Boyd Decl. at ¶ 4; Ex. 2 Wilson Decl. at Att. 7; Ex. 3 Bowen Decl. at ¶ 4; Ex. 4 Simmons Decl. at ¶ 6.

collectively have 432,876 attachments on ILEC poles, which gives ILECs plenty of bargaining power.<sup>31</sup> The NPRM states: “AT&T reports that electric utilities refuse to renegotiate outdated joint use arrangements. . . .”<sup>32</sup> However, Gulf Power just recently wrapped-up a 14-month joint use negotiation with AT&T, and Mississippi Power re-negotiated its joint use agreement with AT&T in 2005 (with an execution date in early 2006).<sup>33</sup> AT&T has not made requests for renegotiation to Alabama Power or Georgia Power.<sup>34</sup>

**C. Consequences of Taking Jurisdiction over ILEC Attachments on Electric Utility Poles.**

**1. *Taking jurisdiction over ILECs under Section 224 would have significant adverse financial impacts on electric utilities.***

Bringing ILECs within the Commission’s jurisdiction under Section 224 would significantly disrupt the long-established contractual positions of both electric utilities and ILECs by allowing ILEC attachments on electric utility poles at a (subsidized) regulated rate, while leaving electric utility attachments on ILEC poles subject to previously negotiated adjustment rates. This is fundamentally unfair considering that the Operating Companies and their ILEC partners have, in some cases, a 75+ year history of operating and maintaining joint use networks on negotiated rates, terms, and conditions.

**2. *Imposing a single regulated rate on ILEC attachments would be inherently unreasonable because relationships between ILECs and electric utilities lack uniformity.***

There is no uniformity in relationships between electric utilities and ILECs. Parity levels differ. Adjustment rates differ. Networks construction processes and costs differ. Liability allocations differ. And pole networks differ based on geography, demographics, and overall

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<sup>31</sup> See *id.*

<sup>32</sup> NPRM at ¶ 15.

<sup>33</sup> See Ex. 3 Bowen Decl. at ¶ 3; Ex. 4 Simmons Decl. at ¶ 7.

<sup>34</sup> See Ex. 1 Boyd Decl. at ¶ 4; Ex. 2 Wilson Decl. at ¶ 15.

demand for electric and telephone services. For example, the Operating Companies all have slightly different agreements with the same ILEC (AT&T/Bellsouth). One notable difference in each of these agreements is contractual parity: for Alabama Power, parity is 56.9/43.1; for Georgia Power, parity is 50/50; for Gulf Power, parity is 55/45; and for Mississippi Power, parity is 57.5/42.5.<sup>35</sup> The adjustment rates (both in terms of amount and structure) differ widely in each agreement.

Some electric utilities even have varying relationships with different ILECs within their own service territories. For example, Gulf Power's two main ILEC partners are AT&T and Embarq (formerly Sprint).<sup>36</sup> In addition to different contractual parity in these relationships (AT&T is 55/45; Embarq is 50/50) and different per pole adjustment rates, the two joint use agreements contain very different consideration in the form of liability sharing.<sup>37</sup> The AT&T joint use agreement essentially provides for a contractual comparative negligence liability allocation,<sup>38</sup> while the Embarq agreement provides for a 54% (Gulf), 46% (Embarq) liability sharing for losses arising out of jointly used poles.<sup>39</sup>

Given this lack of uniformity, it would be inherently unreasonable to apply a single regulatory paradigm to the myriad of relationships between ILECs and electric utilities.

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<sup>35</sup> See *supra* note 23.

<sup>36</sup> See Ex. 3 Bowen Decl. at ¶ 5.

<sup>37</sup> See *id.*

<sup>38</sup> The joint use agreement provides: "It is the express intent of the parties to this Agreement that each party's liability to the other as indemnitor shall be commensurate with that party's degree of negligence in situations involving the joint or concurrent negligence of both parties." See *id.*

<sup>39</sup> See *id.*

3. *Bringing ILECs within the coverage of Section 224 would require wholesale renegotiation of numerous existing joint use agreements and would place the entire burden of ownership of the joint use networks on electric utilities.*

If the Commission were to take jurisdiction over ILEC attachments on electric utility poles, all joint use agreements between ILECs and electric utilities would have to be completely renegotiated because the concept of mutuality would no longer exist between the parties.<sup>40</sup>

ILECs would no longer be “partners” in the networks, would no longer contribute to the construction and upkeep of the networks, and would have less incentive to respect or ensure the safety and reliability of the networks. In fact, the entire burden of ownership for the joint use networks would ultimately shift to electric utilities and their customers.<sup>41</sup>

**D. ILECs Are Trying to Bootstrap Their Way into the Commission’s Jurisdiction.**

The Commission’s jurisdiction over electric utility poles begins only where space on a pole has been designated and is actually being used for communications services by wire or cable.<sup>42</sup> It was electric utilities’ designation of communications space through joint use agreements that created the Commission’s jurisdictional nexus with electric utility poles. Now, though, ILECs are attempting to bootstrap themselves into Commission jurisdiction even though they are the reason for Commission jurisdiction in the first place. This is high stakes gamesmanship. As USTA concedes, and as the Commission recognizes in the NPRM, ILECs would have no access rights under Section 224(f) even if they were favored with the benefit of regulated rates, terms and conditions under Section 224(b). Taken to its logical conclusion,

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<sup>40</sup> For example, liability sharing provisions that exist in some joint use agreements would not be appropriate in an “attacher” relationship.

<sup>41</sup> The Commission should give particularly careful consideration to this consequence. Should the Commission exercise jurisdiction over ILEC attachments on electric utility poles, it would be Commission policy that, in essence, puts electric ratepayers in the position of bearing the entire cost of infrastructure ownership. Placing such costs on the electric ratepayers is well outside the Commission’s jurisdictional sphere.

<sup>42</sup> See *In the Matter of Cable Info. Servs., Inc. v. Appalachian Power Co.*, 81 FCC2d 383, ¶ 22 and n.8 (1980).

electric utilities could entirely remove ILECs from their pole networks (though the Operating Companies have no intention of doing so), which would cut against the Commission's intended goal of promoting facilities based competition. This highlights the impracticality of USTA's proposal.

### **III. Pole Attachment Rates**

#### **A. Broadband Internet Access Service Rates.**

The Operating Companies support the Commission's proposal for adopting a uniform rate for all pole attachments used for broadband Internet access service.<sup>43</sup> For reasons articulated below the uniform broadband rate should be the same as the telecom rate.

By adopting these policies the Commission will ensure that non-pole owners providing similar services in fact receive the identical regulatory treatment and it will help ensure pole owners receive a more fair level of compensation for the costs of providing access to non-pole owning attachers.

#### **1. *The Commission has authority to set a uniform broadband rate.***

Section 224 of the Pole Attachment Act requires the Commission to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable."<sup>44</sup> Although Section 224 establishes a specific "cable rate"<sup>45</sup> and orders the Commission to establish a specific "telecom rate"<sup>46</sup> the Supreme Court has found in *National Cable & Telecommunications Association v. Gulf Power Co.* ("Gulf Power") that the Commission still possesses rate-making powers under the more general delegation of power

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<sup>43</sup> NPRM at ¶ 36.

<sup>44</sup> 47 U.S.C. § 224(b)(1).

<sup>45</sup> See *id.* at § 224(d).

<sup>46</sup> See *id.* at § 224(e)(1).

found in Section 224(b)(1).<sup>47</sup>

The Commission has tentatively concluded that adopting a uniform rate for pole attachments used for broadband would further current Commission policies.<sup>48</sup> The Operating Companies support this conclusion, and, in light of the *Gulf Power* decision, it is clear the Commission has the statutory authority to establish additional rates applicable to those pole attachments used in the provision of broadband Internet services.

2. *The Commission should make the uniform broadband rate the same as the telecom rate.*

(a) *Cable service providers and competitive telecommunications carriers are in direct competition for one another's customers.*

The Commission has, correctly, expressed discomfort with the current pole attachment rate structure.<sup>49</sup> It has rightfully recognized that under the current two rate regime, companies competing for customers for similar services are not treated equally.<sup>50</sup> As the Commission has acknowledged, this disparate treatment can, and most likely has, lead to distortion of market forces.<sup>51</sup>

It should be noted that when discussing the fair and equal treatment between competitors offering similar services, any such discussion should be limited to comparisons between cable service providers and CLECs. The rationale for such an approach is that unlike ILECs, neither the cable service providers nor the CLECs own poles. The absence of pole ownership results in identical challenges regarding access to other parties' poles in order for cable service providers

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<sup>47</sup> See *Nat'l Cable & Telecomms. Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002) (holding that Section 224 gives the Commission broad authority to adopt just and reasonable rates and rejecting the view that Section 224 (d) and (e) limited the Commission's ability to adopt additional rates).

<sup>48</sup> NPRM at ¶ 36.

<sup>49</sup> NPRM at ¶ 26-27.

<sup>50</sup> See *id.*

<sup>51</sup> See *id.* at ¶ 27; see also Time Warner Telecom Inc. White Paper, RM-11293, at 16.

and CLECs to distribute services to their customers.

As the Commission is aware, the reason for this discriminating treatment of attachers that provide similar services derives from cable service providers and CLECs offering blended services (voice, data, and video services) through their attachments previously used solely for providing video and voice services, respectively. Today, however, the market realities are clear: cable service providers and CLECs are in direct competition for one another's customers.<sup>52</sup> Broadband technology is used by cable service providers to deliver services similar, if not identical, to services provided by CLECs.<sup>53</sup> Both cable service providers and CLECs are offering broadband services.<sup>54</sup> These market developments have aligned the two groups into direct competition which further magnifies the unfairness and inadequacy of applying the Section 224 cable rate to attachments used by cable companies to provide broadband services.

In light of the foregoing, it is clear that CLECs and cable service providers are heavily competing against one another because they are offering similar services. From a customer functionality standpoint, there is no difference between VoIP and traditional telecommunications

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<sup>52</sup> See e.g., CSC Holdings Inc SEC Form 10-Q, Page 52-53 (Nov. 8, 2007) ("Our VoIP offering...is competitive with incumbent offerings primarily on the basis of pricing... To the extent the incumbents, who have financial resources that exceed those of the [Cablevision] decide to meet our pricing and/or features or reduce their pricing, future growth and success of this business may be impaired.").

<sup>53</sup> Comcast Corporation has 4.1 million telephone customers, most of them VoIP subscribers, and has doubled its telephone subscribers in the past year. Comcast Corporation SEC Form 10-Q, Page 24 (Oct. 26, 2007); Time Warner Cable has 2.6 million VoIP subscribers and has increased VoIP subscribers 71% over the previous year. Time Warner Cable, Inc. SEC Form 10-Q, Page 3 (Feb. 26, 2007); Charter Communications increased its VoIP subscribers by 136% to 800,00 subscribers over the previous year. CCO Holdings LLC SEC Form 10-Q, Page 17 (Nov. 13, 2007); Cablevision as of September 2007, had over 1.4 million telephone subscribers, a 35% increase from the previous year. CSC Holdings Inc. SEC Form 10-Q, Page 66 (Nov. 8, 2007). In total, according to the National Cable Television Association, there are currently 13.7 million VoIP subscribers and 117.1 million homes passed by cable providers offering broadband data services that could be used to deploy VoIP services. National Cable Television Website, available at <<http://www.ncta.com/Statistic/Statistic/Statistics.aspx>> (last visited Jan. 7, 2008).

<sup>54</sup> Compare Cable Provider Websites available at <<http://www.comcast.com/>>; <<http://www.timewarnercable.com/>>; <<http://www.cox.com/>>; <<http://www.cablevision.com/>>; with CLEC Websites available at Ellijay Telephone Company <<http://www.etcnow.com/>>; Cavalier Telephone <<http://www.cavtel.com/index2.php>>; Primus Telecom <<http://www.primustel.com/>>.

service or broadband internet access and DSL.

- (b) *The uniform broadband rate should be the same as the telecom rate.*

If the Commission is serious about treating like services in a like manner, it is essential that the same pole attachment rate be applied to attachments used for broadband service that applies to CLECs under Section 224(e). Any broadband attachment rate that is less than the telecom rate fails to satisfy the Commission's concerns that similar services should be subject to the same attachment rates.<sup>55</sup>

Moreover, setting a uniform broadband rate at the telecom rate will help to eliminate complaints filed at the Commission regarding which rate should apply to certain attachments. Some cable operators have recently filed pole attachment complaints at the Commission after being charged the telecom rate.<sup>56</sup> These disputes involved blended service offerings where a utility charged the telecom rate while the cable operator insisted upon being charged the cable rate. The Commission's procedures as they currently exist make it difficult to resolve disputes of this kind because it is problematic for either the pole owner or attacher to prove whether or not a given attachment is being used to provide a specific service.<sup>57</sup> All of this could be eliminated by setting the uniform broadband rate at the telecom rate. No longer will pole attachers have any incentive to delay payment and seek relief through the complaint process by offering

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<sup>55</sup> NPRM at ¶ 26.

<sup>56</sup> *Comcast Cable Commc'ns Mgmt., LLC v. Georgia Power Co.*, EB-07-MD-003 (filed Sept. 26, 2007) ("Comcast II Complaint"); *Bright House Networks, LLC v. Tampa Elec. Co.*, EB-06-MD-003 (filed Nov. 21, 2006); *Comcast Cable Commc'ns Mgmt., LLC v. Georgia Power Co.*, EB-06-MD-005 (filed June 2, 2006) ("Comcast I Complaint"); *Charter Commc'ns Inc., v. Union Elec. Co.*, DB-05-MD-030 (filed Nov. 30, 2005).

<sup>57</sup> See 47 C.F.R. §§ 1.1401-1.1408 (although the complaint procedures provide that a cable company offering telecommunications service give notice to a utility, the complaint procedures do not provide a discovery mechanism to allow utilities to determine how much of the network is being used to provide telecommunications services); see generally Comcast I Complaint (Comcast acknowledges it is problematic to determine how much of its network is being used to provide telecommunications services and proposes to use a variety of methods to determine how much of its network should be subject to the telecommunications rate).



unsupported and undocumented arguments for how to apply the two-rate system to blended service offerings.<sup>58</sup>

A broadband rate equivalent to the telecom rate has an added benefit of reducing a utility's burden on collecting disputed claims. Many utilities have resorted to state court collections actions to recover disputed amounts due under Pole Attachment Agreements. These disputes often involve which rate, the cable rate or telecom rate, should be applied to blended service offerings.<sup>59</sup> Under the current process utilities faced with an under-paying or non-paying pole attacher must resort to a collections action in state court, along with responding to a complaint filed with the Commission by the attacher. This is not only costly for the utility, but also results in protracted delays, since some state courts have been reluctant to rule on cases when a matter is pending before the Commission.<sup>60</sup> By simplifying the rates and having the same rates for both broadband and telecommunications services, utilities will no longer have to fight multiple front battles because it will be clearer, for the utility and the attacher, to determine which rate applies to blended service offerings.

Finally, there is also a secondary reason why broadband attachments should be subject to an attachment rate that is the same as the telecom rate set forth in Section 224(e). Currently, cable service providers are afforded a rate under Section 224(d) that does not take into account the proportional cost for the unusable space on a pole. As the previous comments have indicated,

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<sup>58</sup> Comcast II Complaint, pp. 7-11; Comcast I Complaint, pp. 5-11.

<sup>59</sup> *Georgia Power Co. v. Comcast Cable Commc'ns of Penn.*, Ga. Superior Ct., Case No. 2007-CV-135617 (filed June 14, 2007); *Georgia Power Co. v. Comcast Cable Commc'ns of Penn.*, Ga. Superior Ct., Case No. 2006-CV-116060 (filed May 2, 2006); *Tampa Elec. Co. v. Bright House Networks, LLC*, Fla. Cir. Ct. 13th Judicial District, Case no. 06-00819 (Jan. 30, 2006); *Union Elec. Co. v. Charter Commc'ns Inc.*, Mo. Cir. Ct., Case No. 05CC-005581 (Nov. 1, 2005).

<sup>60</sup> Order Denying Bright House's Motion to Dismiss and Granting in Part and Denying in Part Bright House's Motion to Stay, *Tampa Elec. Co. v. Bright House Networks, LLC*, Fla. Cir. Ct. 13th Judicial District, Case No. 06-00819 (filed Jan. 31, 2007) (order staying case pending FCC resolution of Bright House's Pole Attachment Complaint).

all large cable service providers are now offering broadband services. The net result is that utilities and their customers are subsidizing large cable service providers that directly compete with CLECs. This subsidization occurs as a direct result of cable service providers avoiding their proportional cost responsibility for the unusable space on poles. From an equitable standpoint, it is unfair for a utility to shoulder a significant part of the pole attachment cost for an attaching entity that provides the same type of services as other attaching entities that are required to pay a more equitable share of pole attachment costs.

In light of the forgoing, Southern urges the Commission to adopt a single uniform broadband rate that is the same as the telecom rate.

**B. The Commission Should Establish a Rebuttable Presumption That All Cable Attachments Are Used to Provide Broadband Service.**

As previously discussed, it is clear that all major cable service providers are in the process of universally deploying broadband service to their customers. Assuming that the Commission authorizes a rate for broadband attachments, it will be problematic for utilities to determine which attachments are subject to the broadband rate. Since cable service providers are in possession of the data regarding the geographical areas in which they are deploying broadband service, a rebuttable presumption should be established that all cable attachments are broadband attachments. In those instances in which a cable service provider is not providing broadband service, sufficient data or a written declaration can be made available to the utility by the cable service provider to rebut the presumption.

**C. Average Number of Attaching Entities And Modifications to Telecom Rate.****1. *Average number of attaching entities.***

The Commission seeks information on the current state of pole attachments, including specific information on the number of attachers in metropolitan areas.<sup>61</sup> The Commission in its *Partial Order on Reconsideration* established presumptions to be used in the allocation of unusable space on poles. It was thought at the time that every pole was generally occupied by electric, telephone, and cable TV attachers. Thus, the average number of attaching entities for rural attachments was set at three.<sup>62</sup> Because urban areas are more developed, it was thought that poles in urban areas were also occupied by an additional competitive telecommunications service provider and a government agency, thus, the average number of attaching entities was set at five for urban areas.<sup>63</sup>

The *Partial Order on Reconsideration* left open the possibility that utilities or other attachers could develop data to be used in the calculation of the telecom rate in place of these presumptions.<sup>64</sup> One Operating Company, Georgia Power, exercised the option to calculate the actual number of attaching entities. Georgia Power has undertaken surveys over the past five years to count pole attachments and attaching entities on poles in the Georgia Power service area.<sup>65</sup>

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<sup>61</sup> NPRM at ¶ 13.

<sup>62</sup> *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Communications Act, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-97, 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, ¶ 71 (2001) ("Partial Order on Reconsideration").

<sup>63</sup> *Id.* at ¶ 72.

<sup>64</sup> *Id.* at ¶ 70.

<sup>65</sup> Georgia Power's pole survey process and methodology used to calculate the average number of attaching entities are explained in detail in the Declaration J. Darryll Wilson, Joint Use Coordinator in Georgia Power's Joint Use and Distribution Department. See Ex. 2 Wilson Decl. at ¶¶ 4-13.

To perform the field work involved in surveying each pole, Georgia Power used a consultant, Utility Consultants, Inc. ("UCI"). Georgia Power's Data Management Center then analyzed and checked UCI's work for accuracy. The

When conducting its pole surveys, Georgia Power determined that counties with populations of 50,000 persons or greater should be classified as urban areas and the remaining counties are classified as rural areas.<sup>66</sup> The rationale for such an approach is that Georgia has 159 counties which results in each county having a relatively small geographic area.

The surveys produced the following results for Georgia Power's service area:<sup>67</sup>

	Poles with At Least One Foreign Attachment	Poles with at Least one Mandatory Attachment
Urban	2.83	3.03
Rural	2.58	2.81
Combined	2.73	2.95

Frequency of Attaching Entities For Poles With At Least One Foreign Attachment

Number of Attaching Entities including Georgia Power	Number of Poles	Percent of Total Poles
2	296,078	36.3%
3	453,154	55.5%
4	59,043	7.2%
5	7,108	Less than 1%
6	1,116	Less than 1%
7	167	Less than 1%
8	17	Less than 1%
9	8	Less than 1%
Total Number of Poles	816,691	100%

survey process was initiated in 2001 and calls for UCI to survey 100% of Georgia Power's poles pursuant to a five-year cycle designed to cover roughly 20% of the poles each year. *See* Ex. 2 Wilson Decl. at ¶ 5.

Since 2003, UCI has counted each and every entity with any type of attachment on a Georgia Power pole as an "attaching entity." With very limited exceptions, such as fences that completely bar access or perilous situations, UCI counts every pole and attachment using a standardized Joint Use Audit Map and Legends, then forwards all of its data to Georgia Power's Data Management Center. *See* Ex. 2 Wilson Decl. at ¶ 4-5 and Att. 1.

<sup>66</sup> *See* Ex. 2 Wilson Decl. at ¶ 8.

<sup>67</sup> *See* Ex. 2 Wilson Decl. at ¶ 10-14 and Att. 3-6

## Frequency of Attaching Entities For Poles With At Least One Mandatory Attachment

Number of Attaching Entities including Georgia Power	Number of Poles	Percent of Total Poles
2	108,473	17.4%
3	446,687	71.8%
4	58,765	9.4%
5	7,107	1.1%
6	1,114	Less than 1%
7	167	Less than 1%
8	17	Less than 1%
9	8	Less than 1%
Total Number of Poles	622,336	100%

The data compiled by Georgia Power has added significance in view of the fact that the Georgia Power service area has a cross representation of a large urban area, medium sized urban areas and rural areas.<sup>68</sup> Therefore, the Georgia Power data can reasonably be viewed as presenting an accurate picture of the actual number of average attaching entities that can be expected to be found on a typical utility's poles.

In 2006 Gulf Power conducted an audit of the attaching entities on distribution poles in its service area. Including Gulf Power as an attaching entity, the audit determined that there was an average of 2.06 attaching entities on all poles and 2.74 average attaching entities on poles with at least one foreign attachment.<sup>69</sup>

The Operating Companies are also aware of at least one other utility that has in-depth data regarding the average number of attaching entities on its poles. On March 29, 2006 Tampa

<sup>68</sup> Georgia Power's service area consists of a geographic area that includes the heavily urbanized Atlanta-Sandy Springs-Marietta metropolitan area with a population greater than 5,000,000 as well as medium size metropolitan areas such as Augusta, Columbus, Macon and Savannah. See U.S. Census Bureau, 2006 Metropolitan and Micropolitan Statistical Area Estimates available at <<http://www.census.gov/population/www/estimates/CBSA-est2006-annual.html>> (last visited Mar. 6, 2008).

<sup>69</sup> See Ex. 3 Bowen's Decl. at ¶ 6.

Electric Company ("Tampa Electric") submitted comprehensive data in a response to a pole attachment complaint filed by Bright House Networks, LLC.<sup>70</sup> Tampa Electric compiled data at a granular level on a pole-by-pole basis for its entire service area.<sup>71</sup> The data indicated that the average number of attaching entities in the Tampa Electric service area was 2.08 per pole.<sup>72</sup>

2. *The Commission should adjust its presumptions regarding the average number of attaching entities.*

By setting its presumptions too high, the Commission has prevented utilities from fully recouping their costs associated with providing pole access to attaching entities. Instead of fully implementing Congressional intent requiring the Commission to set a rate that recognizes the unusable space of a pole that equally benefits all attaching parties, the current presumptions require utilities, and more importantly its rate-payers, to carry a disproportionate share of the cost.

At the time that the Commission established its presumptions for the average number of attaching entities in the *Partial Order on Reconsideration*, there was an absence of convincing empirical data regarding the actual conditions on poles. Due to the data produced by Georgia Power, Gulf Power and Tampa Electric, we now know that the Commission's determination that the number of attaching entities on poles should be five for urban areas and three for rural areas was substantially in error. Not only did the Commission miscalculate the number of average attaching entities in urban areas, there was also a failure to accurately reach the conclusion that the average attaching entities in urban and rural areas are reasonably close to the same number.

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<sup>70</sup> Tampa Electric Company Response, *In the Matter of Bright House Networks, LLC v. Tampa Electric Co.*, FCC File No. EB-06-MD-003 (filed Mar. 29, 2006).

<sup>71</sup> See *id.* at p.26.

<sup>72</sup> See *id.* (Tampa Electric included itself as part of this count.).

Given the empirical data that is now available the Commission should establish a presumption that there are three attaching entities on both urban and rural poles. Such a presumption will more accurately reflect actual conditions on poles and remove the confusion of determining if an area is rural or urban. In those instances in which either a utility or party with mandatory attachment rights determines that the average attaching entities is an incorrect number, such utility or party should continue to have the right to rebut the presumption through the use of statistically valid data.

This policy will ensure that the cost associated with unusable space is spread more in-line with the Commission's original intention.<sup>73</sup> It will have the added benefit of ensuring that utilities and their customers are not unfairly subsidizing the costs associated with providing access to poles by foreign attachers.

**D. The Safety Space Should be Allocated to Communication Attachers or to Unusable Space and not Allocated to the Utility.**

The Operating Companies request that the Commission revisit its previous conclusion that the 40-inch safety space should be part of the presumed 13.5 feet of usable space.<sup>74</sup> The Operating Companies request the Commission reconsider this position, since clearly the safety space is unavailable for use by the utility.

Rather, the safety space is required because communications attachments are placed in close proximity to electric supply wires. It is the presence of these attachments on poles which renders the space necessary to ensure the safety of communication workers who perform construction and maintenance work on their attachments. The safety space then benefits all communication attachers because they reap the safety benefit of the space being unoccupied.

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<sup>73</sup> *Partial Order on Reconsideration* ¶ 57 (noting that the purpose of the average number of attaching entity figure in the formula is to allocate the cost of unusable space among those entities attached to the pole).

<sup>74</sup> Telecom Order at ¶¶ 21-22.

Therefore, the Operating Companies request the Commission revisit its earlier conclusions<sup>75</sup> and bring its presumptions more in line with this actuality by allocating the safety space among communications attachers. Or, at a minimum, the Commission should classify the safety space as unusable because it is required to be unoccupied, and this renders the space unusable for all practical purposes.

**E. Wireless Attachment Rates.**

The Commission seeks comment on whether to adopt rules applying the telecom rate formula or another standardized rate to the attachment of wireless devices.<sup>76</sup> The Operating Companies believe it is unnecessary, unwarranted, and unreasonable for the Commission to adopt a rule establishing that wireless providers are entitled to a single rate as a matter of law. In the *Telecom Order*, the Commission found that Section 224 applied to attachments by wireless attachers.<sup>77</sup> However, the Commission did not establish a uniform rate or rate formula for wireless attachments. Rather, the Commission acknowledged that, “There are potential difficulties in applying the Commission’s rules to wireless pole attachments...”<sup>78</sup> These difficulties have not changed; therefore, the Commission should *not* adopt a rule that entitles wireless providers to a set rate for wireless attachments.

The Commission should continue its current policies of allowing negotiated agreements between pole owners and wireless providers.<sup>79</sup> As the Commission and utilities are well aware, there is no uniformity to wireless attachments, and, therefore, it is inappropriate to implement a

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<sup>75</sup> *Id.*

<sup>76</sup> NPRM at ¶ 34.

<sup>77</sup> See *Telecom Order* at ¶ 42.

<sup>78</sup> See *id.* at ¶ 41.

<sup>79</sup> See *id.* at ¶ 42.



rate that attempts to cover all wireless attachments.<sup>80</sup> The better approach is for individual pole owners to continue to develop wireless rates on a nondiscriminatory and reasonable basis.

As the Commission knows, there are significant operational considerations and costs associated with wireless attachments that the current telecom rate does not take into account. Wireless attachments can include an antenna or antenna clusters, communications cabinets at the base of poles, coaxial cables connecting antennas to the cabinet and concrete pads to support the cabinet.<sup>81</sup> Traditional wireline telecom attachments have none of these features. Thus, pole owners face different demands from wireless attachments, in terms of make-ready work and pole replacement, removal or repositioning, than traditional wireline attachments.<sup>82</sup> These differences can be costly in terms of engineering and construction costs, and these differentials are not sufficiently considered in the current telecom rate formula.<sup>83</sup>

Some commentators have urged the Commission to adopt rules stating that the Commission's telecom rate formula applies to wireless devices.<sup>84</sup> These commentators claim that the Commission's current approach allows pole owners to charge monopoly rents.<sup>85</sup> This seems at odds with the technological reality of wireless platforms that allow for equipment to be placed on a wide variety of places including, but not limited to, building roofs and dedicated towers. To counteract this reality, commentators claim that they have faced significant hurdles from local governments in placing equipment on these available alternatives.<sup>86</sup> In any event,

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<sup>80</sup> See *infra*; see also Declaration of Candler J. Ginn ¶ 4. ("Ginn Decl." attached hereto as Exhibit 5). Photographs in Attachment 1 of the Ginn Declaration provide further evidence of the variety of wireless attachments. (*Id.* at ¶ 5 and Att. 1).

<sup>81</sup> See Ex. 5 Ginn Decl. at ¶ 4.

<sup>82</sup> *Id.* at ¶ 5.

<sup>83</sup> *Id.* at ¶ 5.

<sup>84</sup> See NextG Comments, RM-11293, at 8-10; Clearlinx Reply, RM-11293, at 12; Virtual Hipster, RM-11293, Comments at 1, 11; T-Mobile Reply, RM-11293, at 2,9; Tropos Networks Comments, RM-11293, at 5-8

<sup>85</sup> Next G Comments, RM-11293, at 8-10.

<sup>86</sup> *Id.*

local zoning decisions are better addressed at the local and state level as opposed to an attempt to address the problem through a Commission order.

In light of the forgoing, the Operating Companies urge the Commission to keep in place the current policy. The current approach gives pole owners a sufficient amount of flexibility to accommodate the needs of wireless attachers while still taking into account the specific needs of pole owners. In the event of abuse by pole owners, wireless attachers can always appeal through the complaint process to rectify any unreasonable and discriminatory conduct by pole owners.<sup>87</sup>

#### **IV. Terms and Conditions of Access**

##### **A. Meaning of “Insufficient Capacity.”**

Section 224(f)(2) of the Pole Attachment Act provides:

[A] utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is *insufficient capacity* and for reasons of safety, reliability and generally applicable engineering purposes.<sup>88</sup>

The Joint Cable Operators ask the Commission to “clarify” that: (1) “the term ‘capacity’ refers not only to capacity on installed poles but all capacity at the disposal of the utility, through reasonable make-ready, at the time of the request for attachment,” and (2) “only where a third party attacher agrees that a taller pole, rearrangement, or other make-ready is not feasible could capacity be deemed ‘insufficient’ to justify a denial of access.”<sup>89</sup> This is not only contrary to existing law, but also would seriously interfere with the Operating Companies’ core mission – providing safe and reliable electricity to their customers.

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<sup>87</sup> 47 C.F.R. §§ 1.1403-04.

<sup>88</sup> See 47 U.S.C. § 224(f)(2) (emphasis added).

<sup>89</sup> See Joint Cable Operators’ Notice of Ex-Parte Presentation in RM-11303, 2-3 (Mar. 21, 2006).

The Operating Companies respectfully request that the Commission deny the Joint Cable Operators' request. To the extent the Commission feels compelled to "clarify" the term "insufficient capacity," Southern respectfully requests that it be clarified to mean any instance in which make-ready (in the form of rearrangement or pole change-out) is necessary to accommodate a proposed attachment, consistent with the Eleventh Circuit Court of Appeals cases addressing this very term, as well as the Commission's own precedent.

1. *The Joint Cable Operators' Position is Contrary to Existing Law.*

(a) *History of the "insufficient capacity" dispute.*

The Joint Cable Operators insist that there is no such thing as a "full capacity" pole, so long as capacity can be expanded to accommodate a new attacher – including actually taking a pole out of the ground and replacing it with a larger pole.<sup>90</sup> This position distorts both the history and purpose of Section 224 of the Pole Attachment Act because it is based on the premise that a "pole" is not really a pole, but instead is an infinite, expandable piece of property.<sup>91</sup>

This is not the first time that cable television operators have pushed the Commission to "clarify" that a pole can never be at full capacity. They also made this argument in the Commission's rulemaking proceedings following the Telecommunications Act of 1996.<sup>92</sup> There, the Commission agreed with the cable operators and "require[d] a utility to take all reasonable steps to expand capacity to accommodate requests for attachment just as it would expand capacity to meet its own needs."<sup>93</sup> The Commission defined "capacity expansion" to include

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<sup>90</sup> *Id.* at 1, 2.

<sup>91</sup> See 47 U.S.C. § 224(f)(2).

<sup>92</sup> See *Order on Reconsideration*, 14 FCC Rcd 18049 (Oct. 20, 1999).

<sup>93</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, 14 FCC Rcd. 18049, ¶ 51 (1999); *Order on Reconsideration*, 14 FCC Rcd 18049, ¶ 53 (Oct. 20, 1999).

steps taken “to *rearrange* or *change out* existing facilities at the expense of the attaching parties in order to facilitate access.”<sup>94</sup>

On appeal, in *Southern Co. v. FCC*, the Eleventh Circuit disagreed with the Commission’s rulemaking and held that the Commission’s position was “contrary to the plain language of § 224(f)(2).”<sup>95</sup> Specifically, the Eleventh Circuit noted that Section 224(f)(2) “carved out” an exception to the general rule that a utility had to make its electric plant available to third party attachers and stated that “it is hard to see how this provision could have any independent meaning if utilities were required to expand capacity [i.e., rearrange or change-out pole] at the request of third parties.”<sup>96</sup> In short, the Eleventh Circuit specifically rejected the very position that the Joint Cable Operators now ask the Commission to adopt.

The Eleventh Circuit also rejected this position in *Alabama Power Co. v. FCC*,<sup>97</sup> where it expressly equated the a “full capacity” pole with the concepts captured in § 224(f)(2): “Congress contemplated a scenario in which poles would reach full capacity when it created a statutory exception to the forced attachment regime.”<sup>98</sup> The common sense and proper definition of “insufficient capacity” under *Alabama Power Co. v. FCC* and *Southern Co. v. FCC* is any pole that would require make-ready (either in the form of rearrangement or change-out – which is how the Commission defines expansion of capacity) to accommodate an additional communications attacher.<sup>99</sup>

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<sup>94</sup> *Id.* at ¶ 53 (emphasis added).

<sup>95</sup> *Southern Co. v. FCC*, 293 F.3d 1338, 1346 (11th Cir. 2002).

<sup>96</sup> *Id.* at 1346-47.

<sup>97</sup> *Alabama Power Co. v. FCC*, 311 F.3d 1357 (11th Cir. 2002).

<sup>98</sup> *Id.* at 1370.

<sup>99</sup> See *id.*; *Southern Co.*, 293 F.3d at 1346-47. The only question mark on this issue is the ALJ’s January 2007 decision in the *Fl. Cable Telecomm. Assoc. v. Gulf Power Co.* case, which erroneously found that: “When capacity is available through rearrangement or expansion of a pole’s height, its capacity cannot be full since there is no exclusion of another and no missed, foreclosed, or lost opportunity.” *Fl. Cable Telecomm. Assoc. v. Gulf Power Co.*,

- (b) *The Joint Cable Operators quote language from Southern Company v. FCC out of context.*

The Joint Cable Operators state that the Eleventh Circuit in *Southern Company v. FCC* held that utilities did not have unfettered discretion to determine when a pole is at full capacity.<sup>100</sup> Not only does this statement ignore the context of the decision, but (ironically) the position taken by the Joint Cable Operators would actually give *attachers* unfettered discretion in making this determination.

Specifically, the Joint Cable Operators argue that a pole cannot be at full capacity unless the attacher and the utility “agree” that the pole is at full capacity.<sup>101</sup> This argument misrepresents the context of the Eleventh Circuit’s specific statements and the ultimate holding of *Southern Co. v. FCC*. In saying “[w]hen it is agreed that capacity is insufficient,” the Eleventh Circuit was referring to the reserved capacity dispute – a related, but separate issue.<sup>102</sup> The Eleventh Circuit was making the point that utilities cannot claim pole space is “reserved” (even though nothing is attached in that space) and then claim that the pole has “insufficient capacity.”<sup>103</sup>

If the Commission accepts the Joint Cable Operators’ interpretation of the Eleventh Circuit’s reference to an “agreement,” attachers would have no incentive to reach agreement on the insufficient capacity determination and could simply demand make-ready regardless of any cost, safety, or reliability implications. In other words, attachers would have unfettered discretion to “disagree” on whether a pole is at full capacity, effectively stripping all meaning

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EB Docket No. 04-381, ¶ 25 (Jan. 31, 2007). Gulf Power filed exceptions to this ruling on Mar. 2, 2007, which have been pending for over a year.

<sup>100</sup> See Joint Cable Operators’ Notice of Ex-Parte Presentation in RM-11303 at 2 (Mar. 21, 2006).

<sup>101</sup> *Id.*

<sup>102</sup> *Southern Co.*, 293 F.3d at 1347.

<sup>103</sup> See *id.* at 1346-47.

from the language of Section 224(f)(2) giving utilities the right to deny access when there is “insufficient capacity.”

2. *The “clarification” requested by joint cable operators would significantly disrupt the Operating Companies from their core mission.*

The “clarification” sought by Joint Cable Operators would, in essence, reduce electric utilities to on-demand make ready contractors. This is troubling enough itself, but borders on devastating when viewed side-by-side with other matters under consideration in the NPRM, particularly mandatory make ready timelines and “one size fits all” safety and reliability standards.<sup>104</sup>

**B. Pole Top Access for Wireless Attachments.**

The Wireless Telecom Carriers have asked the Commission to find that pole top wireless attachments are presumptively reasonable and that utilities should not be able to deny access for pole top attachments.<sup>105</sup> Specifically, NextG Network, Inc. states that:

[T]he Commission should adopt a specific, explicit rule establishing a presumption that pole top attachments for wireless attachments are allowed. To rebut the presumption, a pole owner should be required to obtain an order from the Commission based on conclusive evidence of insufficient capacity or safety, reliability, and generally acceptable engineering purposes that cannot be remedied through make ready, pole expansion or change out at the attaching party’s expense, or other engineering solutions that are acceptable under generally applicable engineering or safety standards. The rule should state that the internal policy of a utility cannot be the basis for denying a pole top attachment.<sup>106</sup>

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<sup>104</sup> See, e.g., Petition for Rulemaking of Fibertech Networks in RM-11303, at 17 (Dec. 7, 2005) (“[T]he FCC should require utilities to complete (or allow licensee-hired contractors to complete) field surveys and identification of any necessary make-ready work within 30 days of receipt of a complete application and to finish make-ready work within 45 days of receiving payment for the work.”).

<sup>105</sup> See T-Mobile USA’s Notice of Ex-Parte Presentation in RM-11303 (Sept. 21, 2006); Reply Comments of Clearlinx Network Corporation, LLC in RM-11303 (Mar. 1, 2006); Comments of NextG Network, Inc. in RM-11303 (Jan. 30, 2006).

<sup>106</sup> Comments of NextG Network, Inc. in RM-11303 at 12 (Jan. 30, 2006).

There are at least three reasons the Commission should decline adopting this rule. First, the Commission lacks jurisdiction. Second, this rule would unlawfully shift the burden to the pole owner in contravention to the Commission's existing rules. Third, any presumption favoring wireless pole top access threatens the safety and reliability of the distribution system.

The Operating Companies are not asking for a presumption that wireless attachers *cannot* attach to pole tops. Rather, the Operating Companies request that the Commission not adopt the Wireless Telecom Carriers' proposed presumption, which would grant wireless attachers virtually unfettered access to pole tops. In other words, the Operating Companies are seeking to retain their statutory right to deny access for reasons of safety, reliability, insufficient capacity and engineering concerns. The Commission's current monitoring of utilities' access decisions, under Section 224(f)(2), is sufficient to protect wireless attachers from discriminatory treatment. Further, the Operating Companies' position is consistent with the Wireless Telecommunications Bureau's 2004 opinion which recognized that utilities could deny access for pole top attachments for reasons of insufficient capacity, safety or reliability.<sup>107</sup>

1. *The Commission does not have jurisdiction to mandate pole top access for wireless attachments.*

Congress's initial decision, in 1978, to allow the Commission to exercise a certain level of jurisdiction over the facilities owned by electric utilities was based on the fact that some electric utilities had decided to "participate in the provision of communications space on [their] utility poles."<sup>108</sup> According to the Commission, the legislative history of the Act evidenced

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<sup>107</sup> See Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, 19 FCC Rcd 24930 (Dec. 23, 2004).

<sup>108</sup> S. Rep. No. 580, 95th Cong., 1st Sess., at 15 (1977). Specifically, Congress explained that FCC may regulate an electric utility's pole attachment arrangements when: (1) the electric utility "shares its pole with a telephone

Congress's intent for the Commission to regulate the pole attachment practices of electric utilities if space on their poles has been designated for communications use.<sup>109</sup> Specifically, the Commission stated:

**[O]ur role is to begin only where space on a utility pole has been designated and is actually being used for communications services by wire or cable.... In other words, where a utility owns or controls a pole on which there has been no designation of communications space, jurisdiction to require access will not lie.<sup>110</sup>**

Under this precedent, the Commission has no authority to require an electric utility to grant access to space on its poles that is not being used for communications functions. This is consistent with other Commission precedent stating that the "underlying purpose" of Section 224 is "to assure that *communications space on utility poles* be made available to cable systems at 'just and reasonable rates, and under just and reasonable terms and conditions.'"<sup>111</sup> By characterizing the Act as conferring authority only over the terms and conditions associated with the "communications space on utility poles," the Commission has recognized that its pole attachment authority is limited in scope to the space designated by the utility for communications. Thus, the Commission has no jurisdiction to require utilities to grant access for wireless attachments to their pole tops when the utilities have not previously designated their pole tops for communications purposes.

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company or other communications entity; and (2) a cable television system shares the communications space on the pole with the telephone utility or other communications entity, or occupies the communications space alone." *Id.*

<sup>109</sup> *In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket 78-144, 68 FCC2d 1585, 1593 (1978).

<sup>110</sup> *In the Matter of Cable Info. Servs., Inc. v. Appalachian Power Co.*, 81 FCC2d 383, 391 (1980) (emphasis added); see also *In the Matter of David Bailey v. Mississippi Power & Light Co.*, 1985 FCC LEXIS 2617 at \*7 ("Since MPLC has designated communications space on its poles and has permitted Fayette Cable to utilize this space for CATV attachments, the necessary nexus exists for the Commission to exercise jurisdiction over MPLC's pole attachment practices.").

<sup>111</sup> *In the Matter of Gulfstream Cablevision of Pinellas County, Inc. v. Florida Power Corporation*, 1985 FCC LEXIS 4123 at \*4 (citing S. Rep. No. 95-580) (emphasis added).



2. *A presumption favoring pole top access for wireless antennae would threaten the safety and reliability of the distribution system.*

Even assuming the Commission has jurisdiction, it should not exercise that jurisdiction.

Requiring utilities to automatically grant access for wireless pole top attachments (without an order from the Commission to the contrary) would unduly restrict utilities' ability to deny access for reasons of safety, reliability, and engineering concerns.

Parts of the Operating Companies' networks, for example, are located in a lightning prone and wind prone area of the country. Adding pole top attachments could destabilize and threaten the safety of the Operating Companies' poles and lines because of the high occurrence of lightning and strong wind. Further a wireless device installed at the top of a distribution pole may provide a path to ground.<sup>112</sup> This would reduce the Basic Insulation Level ("BIL") of the system and increase the likelihood of customer outages due to lightning.<sup>113</sup> Moreover, some wireless devices can emit an RF signal with sufficient power to be hazardous to people. Finally, during installation and maintenance of the wireless devices located in the supply space on a distribution pole, some temporary modifications to the protective devices for that location would have to be made.<sup>114</sup> This would increase the likelihood of customer outages in the event of a momentary fault on the system.<sup>115</sup>

Wireless pole top attachments are not appropriate for all pole networks. Utilities should have discretion in determining whether to allow these attachments and should not have to petition the Commission every time it is necessary to deny access for reasons of safety and reliability. The Commission's role is to ensure that utilities' standards are applied in a

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<sup>112</sup> See Declaration of Keith Reese at ¶ 6, attached as Exhibit 6.

<sup>113</sup> See *id.*

<sup>114</sup> See *id.*

<sup>115</sup> See *id.*

nondiscriminatory manner – not to make electric utilities defend their safety, reliability and engineering decisions in every instance where access is denied. As such, the Operating Companies respectfully request that the Commission deny the Wireless Telecom Carriers’ proposed presumption in favor of pole top access.

**3. *The burden and presumption proposed by NextG Network is contrary to the law and Commission precedent.***

NextG Network’s request would require utilities to affirmatively disprove an attacher’s right to pole top access, in contrast to the spirit and requirements of Section 224(f)(2) and the Commission’s complaint proceeding rules. Section 224(f)(2) specifically gives utilities the right to deny access for reasons of insufficient capacity, safety or reliability, without placing any burden on utilities to prove why access should be denied. Under Section 224(f)(2) and the complaint proceeding rules, it is the attacher’s obligation to challenge any denial of access.<sup>116</sup> Thus, the party being denied access must seek relief from the Commission, not the other way around. This allows utilities to have discretion in enforcing their construction specifications and in ensuring the safety and reliability of their networks, while also allowing the Commission to determine on an *ad hoc* basis whether utilities are denying access in a discriminatory fashion.

**C. Access to Records.**

The Operating Companies note that in footnote 112 of the NPRM the Commission asks “whether we should clarify the general record-keeping and information-sharing responsibilities of utilities and attachers.”<sup>117</sup>

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<sup>116</sup> For example, Section 1.1402 of the Commission’s Pole Attachment Complaint Procedures defines “complaint” as any filing “alleging that [the complainant] has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not just and reasonable.” See 47 C.F.R. § 1.1402(d).

<sup>117</sup> NPRM at n. 112.

Open access of utility records to attackers raises serious security and public welfare issues. Examination of utility records will reveal sensitive information regarding exacting detail of electric distribution systems and electrical grids used to provide service to military bases, airports, air traffic control operations, law enforcement and fire fighting facilities, hospitals, as well as federal, state and local governmental agencies and departments.<sup>118</sup> Such information in the hands of a terrorist or any other group or individual intent on nefarious conduct could prove to be a disaster.

Given the sensitive information in utilities' records, the Operating Companies urge the Commission to refrain from taking any action that hinders utilities' abilities to protect such records.

**D. Safety and Reliability Standards.**

The NPRM broadly seeks comment on the terms and conditions of pole access.<sup>119</sup> In particular, the NPRM seeks comment on the engineering and make ready construction issues raised in the Fibertech Petition, and specifically seeks comment addressing "to what extent safety codes, such as the NESC, should apply to all attackers. . . ."<sup>120</sup> The Operating Companies urge the Commission to decline the invitation to adopt any presumptions or rules of general applicability addressing engineering and construction. Any such presumption/rules would impact a utility's ability and responsibility to ensure the safety and reliability of its electric distribution system, and tread on the regulatory authority reserved for the state under Section 224(c). The Commission's role is, and should remain, to address access disputes (and the

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<sup>118</sup> Ex. 2 Wilson Decl. at ¶ 19.

<sup>119</sup> NPRM at ¶¶ 37-38.

<sup>120</sup> *Id.* at ¶ 38.

concomitant safety and reliability concerns implicated) on an ad hoc basis, with the test being whether the utility is applying its safety and reliability standards on a non-discriminatory basis.

**1. *The Florida Storm Hardening Proceedings.***

The Florida Storm Hardening proceedings are a recent example of a state's exercise of its regulatory authority over safety and reliability of electric infrastructure, working in synergy with a utility's responsibility to ensure the safety and reliability of its distribution system. Following the extraordinary 2004 and 2005 hurricane seasons, the Florida Public Service Commission ("FPSC") undertook a multi-pronged approach to strengthen the electric infrastructure in Florida. In its earliest orders, the FPSC noted the impact of third party attachments on the safety and reliability of electric infrastructure.<sup>121</sup>

Following months of language development and revision, with participation by all affected parties (including the Florida Cable Telecommunications Association, on behalf of its member cable operators), the FPSC approved new storm hardening rules which required electric utilities to submit Storm Hardening Plans for approval by the FPSC. The new rules provide, in pertinent part:

Attachment Standards and Procedures: As part of its storm hardening plan, each utility shall maintain written safety,

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<sup>121</sup> In its February 27, 2006 "Eight-Year Pole Inspection Cycle" Order, the FPSC noted:  
Factors such as electrical and non-electrical pole attachments impose additional strength requirements that are considered at the time the pole is installed. Of course, many pole attachments occur well after the date of pole installation .... We believe that third parties have completed pole attachments to electric IOU wood poles that were done without full consideration of [NESC loading evaluation requirements.]

Order No. 06-0144 PPA-EI, Docket No. 060078-EI. Similarly, in its April 25, 2006 "Ten-Point Initiative" Order, the FPSC stated:

Each investor-owned electric utility shall develop a plan for auditing joint-use agreements that includes pole strength assessments .... The location of each pole, the type and ownership of the facilities attached, and the age of the pole and attachments to it should be identified.

Order No. PSC-06-0351-PAA-EI, Docket No. 060198-EI.

reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and procedures). The Attachment Standards and Procedures shall meet or exceed the edition of the National Electric Safety Code ... so as to assure, as far as is reasonably practicable, that third party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or pole reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

25-06.0342(5). Pursuant to this requirement, Gulf Power (along with the other Florida investor owned electric utilities) submitted Storm Hardening Plans for the FPSC's approval. Gulf Power's Storm Hardening Plan was approved by the FPSC on December 28, 2007.<sup>122</sup>

*2. Third party attachment standards and procedures.*

Third party attachment standards, which apply to attachers within the Commission's jurisdiction, as well as attachers outside the Commission's jurisdiction, do not exist in a vacuum. They are part in parcel of an electric utility's overhead distribution construction standards. These standards include clearance and loading requirements which are required (by FPSC rule) to "meet or exceed" the NESC – the clear implication being that the NESC is a bare minimum, and the clear contemplation being that individual utility standards would appropriately exceed the NESC in certain circumstances.

Paragraph 38 of the NPRM asks commenters to address whether the Commission should adopt "specific enforceable safety requirements" in connection with a utility's right to deny access under Section 224(f)(2), and whether "safety codes, such as the NESC should apply to all attachers."<sup>123</sup> The answer to both of these questions is "no." A utility's individual safety, reliability and engineering standards, especially where they are developed with state regulatory

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<sup>122</sup> Order No. PSC-07-1022-FOF-EI.

<sup>123</sup> NPRM at ¶ 38.

oversight or to meet state infrastructure improvement initiatives, should control. Violations of these standards should be handled according to the pole attachment agreement between the parties, with the Commission's complaint proceeding jurisdiction serving as a backstop in the event an attacher believes a utility's standards are being applied in a non-discriminatory manner.

3. *The Commission should defer to an individual utility's safety and reliability standards, as well as agreements between utilities and attachers.*

As part of its FPSC-required Storm Hardening Plan, Gulf Power proposed an overlashing notification protocol that would enable it to perform pole strength and loading analyses prior to new burdens being placed on a pole. The four largest cable television attachers in Gulf Power's service territory, working through the Florida Cable Telecommunications Association, even reached a negotiated Stipulation with Gulf Power addressing the overlashing notification protocol.<sup>124</sup> However, Gulf Power recently learned that its largest cable television attacher was overlashing without notification since shortly after executing the Stipulation, impacting roughly 500 poles in Gulf's system.<sup>125</sup> While the motivation for this particular violation is unknown, the Commission's current policy with respect to overlashing, which might fairly be interpreted to elevate "pro-competitive" goals over legitimate safety and reliability standards (even in the face of clear agreement by the third party attacher), is partly to blame.

The Operating Companies respectfully requests that the Commission decline the invitation to adopt any sort of universal set of engineering standards. If the Commission were to adopt universal standards which are at odds, for example, with Gulf Power's Storm Hardening obligations, the objections from third party attachers would undermine Gulf's ability to meet those obligations. To the extent a third party attacher is challenging the application of Storm

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<sup>124</sup> See Ex. 3 Bowen Decl. at ¶ 7.

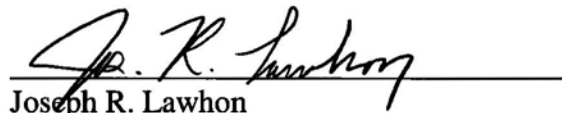
<sup>125</sup> See *id.*

Hardening initiatives, on grounds of discrimination, it can raise those complaints with the Commission on an *ad hoc* basis through the Commission's complaint procedure. This is the proper role of the Commission in matters of safety, reliability and engineering – not to micromanage an electric utility's distribution system standards.

**V. Conclusion**

The Operating Companies respectfully request that the Commission: (1) decline the invitation to treat ILECs like CLECs under Section 224 due to the unique, long-lasting, and sophisticated relationships between electric utilities and ILECs; (2) adopt the telecom rate (with tweaked presumptions) for all CATV and CLEC broadband attachments; and (3) to decline the specific access related requests addressed above, so as to preserve an electric utility's rights under Section 224(f)(2). The Operating Companies appreciate the Commission's interest in these important matters, and look forward to offering further comments and evidence in reply.

Respectfully submitted,



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*Counsel for Alabama Power Company, Gulf Power Company, and Mississippi Power Company*

# **EXHIBIT 1**



**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )

Implementation of Section 224 of the Act; )  
Amendment of the Commission's Rules and )  
Policies Governing Pole Attachments )

WC Docket No. 07-245  
RM - 11293  
RM - 11303

**DECLARATION OF DONALD W. BOYD**

1. My name is Donald W. Boyd. I am currently employed by Alabama Power Company ("Alabama Power") as the Distribution Planning Manager. My job responsibilities as Distribution Planning Manager include managing the joint use and pole attachment relationships with third parties who attach equipment to Alabama Power's poles. I have held this position for 7 years, and I have been employed by Alabama Power for 31 years. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as Distribution Planning Manager for Alabama Power.

2. Alabama Power is an operating subsidiary of Southern Company that serves 1.4 million homes, businesses and industries in the southern two-thirds of Alabama. It owns 1,396,297 distribution poles, the vast majority of which are impacted by third-party attachments. Alabama Power's poles contain a total of approximately 1.1 million third-party attachments.

3. Alabama Power has twenty-two joint use agreements with ILECs in its service area. Some of these arrangements have been in place for more than 80 years. All of the larger and more recent agreements are based on the concept of parity, which means each party is supposed to own a certain percentage of joint use poles. The purpose of parity is to achieve equitable

sharing of the costs of pole infrastructure construction and ownership and so that neither party is required to pay annual rental payments. When one party is out of parity (meaning it does not own its equitable share of joint use poles), that party pays an annual pole rent based on the difference in pole ownership. Our joint use agreements mutually reduce both parties' costs.

4. Alabama Power's contractual parity with its largest ILEC attacher, Bellsouth, is 56.9% (Alabama Power) to 43.1% (Bellsouth). Its actual relative pole ownership with Bellsouth as of the last audit in 2003 is 74% to 26%. Alabama Power's relative ownership ratio with Bellsouth in 1996 was 68% (Alabama Power) to 32% (Bellsouth). Alabama Power has 187,085 attachments on ILEC poles. From my perspective, Alabama Power has a working and functioning relationship with BellSouth. We meet regularly with BellSouth representatives to discuss and resolve issues. BellSouth has not requested a renegotiation of our joint use agreement since I have been the Distribution Planning Manager. Alabama Power does not jointly own any poles with its ILEC partners.

5. Though Bellsouth's relative ownership has slightly declined since 1996, Alabama Power's second largest ILEC partner has experienced an approximately 1% increase in relative ownership since 1996. Alabama Power's relationship with different ILECs varies in terms of operational protocol and economic consideration.

6. System-wide pole audits that capture data on a pole-by-pole basis are expensive and time consuming, especially for a large, geographically spread out system like the one owned by Alabama Power. Currently, Alabama Power uses the FCC's presumed 5 attaching entities for purposes of the telecom rate, though I do not believe this reflects the actual conditions on our poles. Our audits thus far have not captured data that allows us to determine the average number

of attaching entities on any subset of distribution poles. However, if we include all distribution poles, our average number of attachments per pole (including Alabama Power) would be approximately 1.5.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 7<sup>th</sup> day of March, 2008.

Donald W. Boyd  
Donald W. Boyd, Distribution Planning Manager  
Alabama Power Company

# **EXHIBIT 2**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	WC Docket No. 07-245
	)	
	)	RM-11293
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	RM-11303
Policies Governing Pole Attachments	)	
	)	

**DECLARATION OF J. DARRYLL WILSON**

1. My name is J. Darryll Wilson. I am the Joint Use Coordinator in the Joint Use and Distribution Department of Georgia Power Company ("Georgia Power"), a wholly owned subsidiary of Southern Company. My business address is 241 Ralph McGill Boulevard, NE, Atlanta, Georgia 30308-3374. I am over 18 years of age and have personal knowledge of all matters set forth herein.

2. As Joint Use Coordinator, I am responsible for the administration of Pole Attachment Agreements between Georgia Power and attaching parties. I have been employed as Joint Use Coordinator for Georgia Power for 9 years.

3. In my role as Joint Use Coordinator, I customarily receive summary data from the Georgia Power Data Management Center. Such data is used to determine the number of attachments on Georgia Power's poles, the location of attachments, and the average number of attaching entities on poles that have at least one foreign attachment. Georgia Power relies on the data provided by the Data Management Center to prepare invoices for its attaching entities.

4. Beginning in 2001, Georgia Power collected data through its contractor, UCI, to approximate the average number of attaching entities on Georgia Power's poles. This process has been refined and with the pole attachment counts beginning with the year 2003 and forward, Georgia Power is now counting every attaching entity, including Georgia Power, on every pole that is examined during a pole attachment count. (The counts referenced in this Declaration have not included data relating to poles Georgia Power obtained in July 2006 through a merger with Savannah Electric Power Company.)

5. Georgia Power conducts pole attachment counts by counties on a five year cycle. The Georgia Power Pole Attachment Count Schedule Map is set forth in Attachment 1. With minimum exceptions, Georgia Power follows the Schedule. Each year, Georgia Power contracts with UCI to count pole attachments in specified counties that contain approximately 20% of the Georgia Power poles located in the state of Georgia. When UCI counts attachments and attaching entities on poles, it makes a best effort to review 100% of the poles in a county. UCI uses the Joint Use Audit Map symbols Legend that is set forth in Attachment 2 for the examination of every pole. The data collected by UCI is then forwarded to Georgia Power and stored in the storage area of the Data Management Center.

6. The Data Management Center analyzes the data provided by UCI and develops summary data that is then forwarded to the Georgia Power Joint Use and Distribution Department.

7. In order to establish the number of average attaching entities, Georgia Power has relied upon data collected during annual attachment counts.

8. Relying upon pole attachment count data, Georgia Power has developed an average attaching entity number for both urban and rural service areas. Georgia Power defines

its service areas by county. The state of Georgia has 159 counties with each county consisting of a relatively small geographic area. Counties with a population of 50,000 persons or greater are considered to be urban counties. Counties with a population of less than 50,000 are considered to be rural counties.

9. The attachment count data for the years 2003 through 2007 includes every attaching entity including Georgia Power, municipalities, governmental attachments, incumbent local exchange carriers, competitive local exchange carriers, cable service providers, private attachments and attachments made by Georgia Power affiliates. In sum, if any entity of any type or kind had an attachment on poles, they were counted as an attaching entity for purposes of calculating the average number of attaching entities.

10. Georgia Power has collected data indicating the average number of attaching entities on poles with at least one foreign attachment for the years 2003 through 2007. See Attachment 3.

11. Georgia Power has collected data indicating the average number of attaching entities on poles with at least one mandatory attachment for the years 2003 through 2007. See Attachment 4.

12. Georgia Power has relied upon its internal data to determine the frequency of attaching entities on poles with at least one foreign attachment by counties relying upon data collected during pole attachment counts in the years 2003 through 2007. This data is set forth in Attachment 5.

13. Georgia Power has relied upon its internal data to determine the frequency of attaching entities on poles with at least one mandatory attachment by counties relying upon data

collected during pole attachment counts in the years 2003 through 2007. This data is set forth in Attachment 6.

14. In the course of my duties for Georgia Power I normally conduct statistical analysis of data. I have a Bachelor of Industrial Engineering degree from the Georgia Institute of Technology and as part of my academic training I have taken courses in statistical analysis. Relying upon my experience and academic training, I have analyzed and prepared the data in Attachments 3-6. To the best of my knowledge the information in Attachments 3-6 is correct.

15. As Joint Use Coordinator, I am also responsible for the administration of Joint Use Agreements between Georgia Power and Incumbent Local Exchange Carriers (ILECs). During my 9 years as Joint Use Coordinator AT&T, including its successor-in-interest BellSouth, has never approached Georgia Power about renegotiating its Joint Use Agreement. Nor am I aware of any other ILEC who has attempted to renegotiate their Joint Use Agreement over the past 9 years.

16. There are 30 ILECs in Georgia Power's service area that have Joint Use Agreements with Georgia Power.

17. Georgia Power does not share ownership of any poles that are subject to attachment rights under ILEC Joint Use Agreements.

18. I have also compiled the data regarding ILEC attachments on Georgia Power's poles which is set forth in Attachment 7.

19. As Joint Use Coordinator, I am also familiar with Georgia Power's records documenting its distribution system, including its above and below ground distribution lines. The information contained in these records contains sensitive information that could be used to



do serious and irreparable harm to the electrical distribution system in the Georgia Power Service Territory.

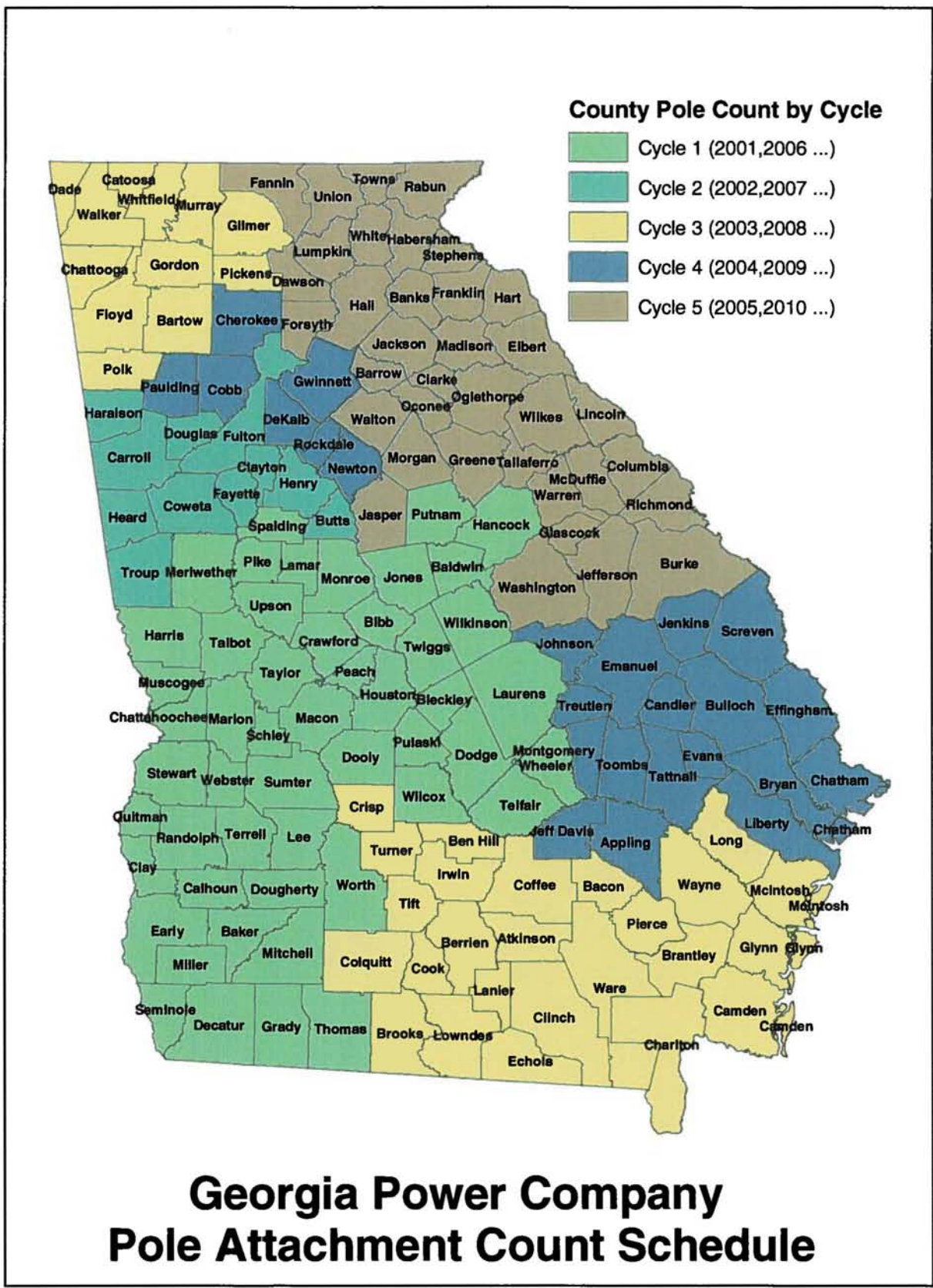
I declare under penalty of perjury that the statements contained in this Declaration are true and correct.

Executed on March 06, 2008.

A handwritten signature in cursive script, reading "J. Darryll Wilson", is written over a horizontal line.

J. Darryll Wilson

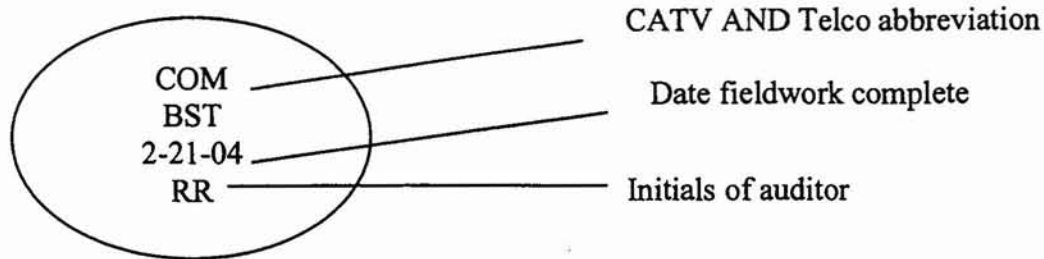
# **Attachment 1**



# **Attachment 2**

## UCI-GPC Joint Use Audit Map symbols Legend


**Map justification** - primary CATV and Telco Company attached to the map.  
Date and initials of the field auditor.



### Color codes for Joint Attachment information


- Yellow - GPC owned pole that does not have a map justified CATV or TELCO Company attached.
- Blue - GPC owned pole that has the map justified CATV Company attached.
- Green - GPC owned pole that has the map justified TELCO Company attached.
- Orange - GPC owned pole that has the map justified CATV and TELCO Company attached.
- Pink - Map justified TELCO owned pole.
- Circled pole w/ no highlight - Foreign pole to GPC with GPC attached. Ownership will be specified for each map. If underbuild or overbuild by another power company, the position on the pole will be specified.
- Transmission Poles will be identified by circling the TR and the height. UCI will cross out the TR symbol on the map for incorrectly labeled Non-Transmission poles.
- Other info
  1. Large blue 2, blue 3, etc. Indicates multiple consecutive attachments for the same CATV map justified company.
  2. Traffic attachments may be justified with a position followed by TR. (Example 1 - TR. Indicated traffic in the first position.)
  3. NIF - circled poles are not in the field.
  4. New poles will be drawn in that are not shown on the map.
  5. Poles x'd out are poles that are non-wood and were not inspected as part of the joint use audit.
  6. Other symbols will be justified in a legend on each map.

### Color codes for Pole Transfers pending

- Blue T - CATV transfer pending on a GPC owned pole.
- Green T - TELCO transfer pending on a GPC owned pole.
- Orange T - CATV and TELCO transfer pending on a GPC owned pole.
-  Marked beside the pole indicates a stub pole ready to be pulled.




1. When possible street address for the location of transfer will be captured and noted on the map next to the corresponding transfer marking.
2. Non-justified companies with pending transfers will be noted next to the corresponding transfer marking.

#### **CATV Power supply information**


 CATV power supply. (Highlighted yellow)

 Large CATV power supply. (Highlighted yellow)

#### **TELCO, CATV, and CLEC riser information**

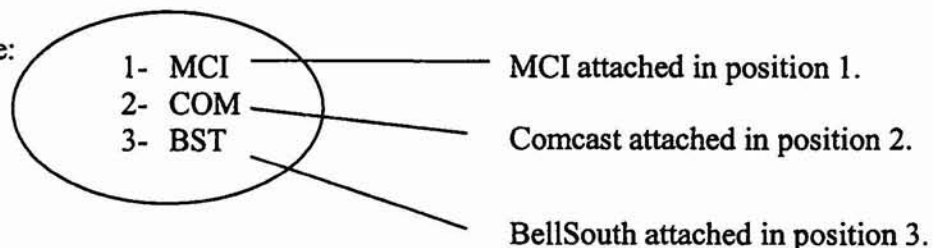
-  Marked beside the pole indicates a map justified CATV riser.
-  Marked beside the pole indicates a map justified TELCO riser.
-  Marked beside the pole indicates both a TELCO and CATV riser.

#### **Number of TELCO attached cables**

-  Marked beside the pole indicates the number of TELCO cables attached to the pole. (# = 1, 2, 3, etc.)

#### **Sequencing**

- The order of attachments is defined to be CATV 1<sup>st</sup>, TELCO 2<sup>nd</sup> unless otherwise justified.
- CLEC and Traffic sequencing will be noted for each location or justified on the map.
- Example:



# **Attachment 3**

Sum of GPC poles County Type		LAST_AUDIT	Foreign Attachments							All GPC Poles with Foreign Attachments			All GPC Poles		
			ILEC	Mandatory Access	Type Power	Private	Public	unknown	Grand Total	Total GPC poles with JU	Total Attachments on Joint Use Poles	Average Attaching Entities with Joint Use	Total GPC Poles	Total Attachments	Average Attaching Entities All GPC Poles
Rural	Appling	2004	1912	1588	142	21	49		3712	2314	6026	2.60	3970	7682	1.94
	Atkinson	2003	838	1026			15		1879	1156	3035	2.63	2627	4506	1.72
	Bacon	2003	54	2	1		11		68	68	136	2.00	1847	1915	1.04
	Baker	2006	352	314			2		668	439	1107	2.52	970	1638	1.69
	Baldwin	2006	8434	8206	12	26	238		16916	9749	26665	2.74	13398	30314	2.26
	Banks	2005	1762	1199	93	10	18		3082	2312	5394	2.33	6112	9194	1.50
	Barrow	2005	5198	4748	131	13	144		10234	5602	15836	2.83	7362	17596	2.39
	Ben Hill	2003	2						2	2	4	2.00	212	214	1.01
	Berrien	2003	2229	2328	1		20		4578	2643	7221	2.73	4210	8788	2.09
	Bleckley	2006	1858	1781			57		3696	2192	5888	2.69	3175	6871	2.16
	Brantley	2003	157	705	13		8		883	760	1643	2.16	1564	2447	1.56
	Brooks	2003	571	456	23		1		1051	659	1710	2.59	1632	2683	1.64
	Bryan	2004	4	549	8		14		575	551	1126	2.04	1390	1965	1.41
	Burke	2005	4044	2861	65	1	85		7056	4767	11823	2.48	8893	15949	1.79
	Butts	2007	1503	986	161		17		2667	1669	4336	2.60	2526	5193	2.06
	Calhoun	2006	1311	1122	9	2	119		2563	1517	4080	2.69	2973	5536	1.86
	Camden	2003	378	4134	59		46		4617	4281	8898	2.08	7546	12163	1.61
	Candler	2004	1055	1289	38	1	28		2411	1520	3931	2.59	3701	6112	1.65
	Charlton	2003	748	1219	51		21		2039	1415	3454	2.44	3018	5057	1.68
	Chattahoochee	2006	123						123	123	246	2.00	172	295	1.72
	Chattooga	2003	8299	5557	72		17		13945	9271	23216	2.50	12698	26643	2.10
	Clay	2006	666	423	34		38		1161	742	1903	2.56	2362	3523	1.49
	Clinch	2003	778	1118	119		3		2018	1363	3381	2.48	2475	4493	1.82
	Coffee	2003	870	1901	31		5		2807	2071	4878	2.36	3670	6477	1.76
	Colquitt	2003	1392	1571			16		2979	1987	4966	2.50	3785	6764	1.79
	Cook	2003	1203	1073	33		5		2314	1473	3787	2.57	2564	4878	1.90
	Crawford	2006	209	171	6	3	27		416	255	671	2.63	1144	1560	1.36
	Dade	2003	2196	3688			20		5904	4738	10642	2.25	12737	18641	1.46
	Dawson	2005	1817	1112	100		18		3047	2056	5103	2.48	2818	5865	2.08
	Decatur	2006	5286	4503	82	23	192		10086	6314	16400	2.60	10728	20814	1.94
	Dodge	2006	2555	2511	103	7	91		5267	3111	8378	2.69	4851	10118	2.09
	Dooly	2006	1525	1953	44	13	78		3613	2370	5983	2.52	4981	8594	1.73
	Early	2006	384	233	7		38		662	454	1116	2.46	1258	1920	1.53
	Echols	2003	557	550			27		1134	750	1884	2.51	1295	2429	1.88
	Elbert	2005	1735	862	18	1	4		2620	1836	4456	2.43	2811	5431	1.93
	Emanuel	2004	3120	3143	74	2	155	11	6505	3802	10307	2.71	6205	12710	2.05
	Evans	2004	1551	1670	6		76		3303	2052	5355	2.61	3394	6697	1.97
	Franklin	2005	3328	2684	73	18	156		6259	3954	10213	2.58	6162	12421	2.02
	Gilmer	2003	4844		98		5		4947	4846	9793	2.02	5807	10754	1.85
	Glascock	2005	580	206	3	2	44		835	623	1458	2.34	1231	2066	1.68
	Gordon	2003	5518	2061	34	81	4		7698	5837	13535	2.32	7847	15545	1.98
	Grady	2006	5						5	5	10	2.00	49	54	1.10
	Greene	2005	2601	2214	240		58		5113	3403	8516	2.50	5811	10924	1.88
	Habersham	2005	4445	4187	41	4	111		8788	5117	13905	2.72	7249	16037	2.21
	Hancock	2006	2236	928	26		2		3192	2429	5621	2.31	4619	7811	1.69
	Haralson	2007	6053	3961	43		204		10261	6327	16588	2.62	8012	18273	2.28
	Harris	2006	6542	4135	4		28	19	10728	7398	18126	2.45	11165	21893	1.96
	Hart	2005	1877	2336	45	4	120		4382	2717	7099	2.61	4292	8674	2.02
	Heard	2007	1431	1010	38		47		2526	1540	4066	2.64	2006	4532	2.26
	Irwin	2003	707	693			27		1427	833	2260	2.71	1310	2737	2.09
	Jackson	2005	1741	2490	65	9	38		4343	3081	7424	2.41	5824	10167	1.75
	Jasper	2005	812	49	23		3		887	836	1723	2.06	1779	2666	1.50
	Jeff Davis	2004	1328	1363	40		137		2868	1580	4448	2.82	2317	5185	2.24
	Jefferson	2005	4083	3195	36	25	123		7462	4521	11983	2.65	7836	15298	1.95



Jenkins	2004	1013	904	4	19	1940	1170	3110	2.66	1688	3628	2.15
Johnson	2004	1227	1308		52	2587	1530	4117	2.69	2450	5037	2.06
Jones	2006	3766	2823	70	9	23	49	6740	2.55	7414	14154	1.91
Lamar	2006	943	580	48	10	11	1592	1099	2.45	1829	3421	1.87
Lanier	2003	883	1193	1		2	2079	1335	2.56	1905	3984	2.09
Laurens	2006	6114	6279	116	29	225	12763	6933	2.84	10686	23449	2.19
Lee	2006	1511	1651	32	4	108	3306	2014	2.64	3257	6563	2.02
Lincoln	2005	87	1369	115		62	1633	1512	2.08	4363	5996	1.37
Long	2003	396	831	18		7	1252	907	2.38	2159	3411	1.58
Lumpkin	2005	2420	1364	16	3	11	3814	2528	2.51	3189	7003	2.20
Macon	2006	2446	2246	6	3	99	4800	2701	2.78	5455	10255	1.88
Madison	2005	1048	1894	39	10	122	3113	2262	2.38	5928	9041	1.53
Marion	2006	868	840	5	2	10	1725	987	2.75	1997	3722	1.86
McDuffie	2005	4278	3723	27	8	46	8082	4855	2.66	7013	15095	2.15
McIntosh	2003	28	1971			8	2007	1977	2.02	4765	6772	1.42
Meriwether	2006	6050	4867	1	2	113	11033	7016	2.57	11238	22271	1.98
Miller	2006	777	638	4	5	4	1428	852	2.68	1377	2805	2.04
Mitchell	2006	2166	1909	146	30	944	5195	2640	2.97	4138	9333	2.26
Monroe	2006	1321	924	138	4	24	2411	1676	2.44	2671	5082	1.90
Montgomery	2004	1206	1328	25	1	12	2572	1500	2.71	2285	4857	2.13
Morgan	2005	2672	1319	270		23	4284	2986	2.43	4638	8922	1.92
Murray	2003	7793	6320	20	26	9	14168	8545	2.66	10677	24845	2.33
Oconee	2005	1615	1289	74		45	3023	1804	2.68	2621	5644	2.15
Oglethorpe	2005	528	852	64		19	1463	1156	2.27	3683	5146	1.40
Peach	2006	1648	1596	17		40	3301	2051	2.61	2971	6272	2.11
Pickens	2003	2888	2536	12		6	5442	3550	2.53	4423	9865	2.23
Pierce	2003	1876	2081	29		26	4012	2745	2.46	4331	8343	1.93
Pike	2006	1917	1166	27	13	81	3204	2144	2.49	3271	6475	1.98
Polk	2003	15688	11566			56	27310	17321	2.58	22257	49567	2.23
Pulaski	2006	1401	1400	126	7	45	2979	1817	2.64	2943	5922	2.01
Putnam	2006	3555	3322	116		17	7010	4173	2.68	5739	12749	2.22
Quitman	2006	541	341	20			902	617	2.46	844	1746	2.07
Rabun	2005	9316	4942	20	13	62	14353	9871	2.45	12534	26887	2.15
Randolph	2006	1823	1488	2	11	106	3430	2001	2.71	3888	7318	1.88
Schley	2006	171	142	53	4		370	320	2.16	1408	1778	1.26
Seminole	2006	951	1359	15		99	2424	1520	2.59	2450	4874	1.99
Stephens	2005	4569	4180	78		170	8997	5304	2.70	7518	16515	2.20
Stewart	2006	1088	713	18		13	1832	1136	2.61	1788	3620	2.02
Sumter	2006	5771	5104	62	77	229	11243	6834	2.65	12346	23589	1.91
Talbot	2006	1250	1278	28		17	2573	1692	2.52	3387	5960	1.76
Tallaferro	2005	41	291			1	333	297	2.12	1271	1604	1.26
Tattnall	2004	1782	3135	123	4	144	5188	3498	2.48	7024	12212	1.74
Taylor	2006	673	832	20		38	1563	1037	2.51	4210	5773	1.37
Telfair	2006	2850	3108	17	11	144	6130	3492	2.76	5476	11606	2.12
Terrell	2006	1977	1869	20	5	23	3894	2304	2.69	4209	8103	1.93
Thomas	2006	2137	2239	103	25	78	4582	2707	2.69	5001	9583	1.92
Tift	2003	6151	8492	39		126	14808	6958	3.13	11116	25924	2.33
Toombs	2004	3902	3710	13	9	123	7757	4506	2.72	6405	14162	2.21
Treutlen	2004	805	950	4	2	40	1801	1070	2.68	1771	3572	2.02
Tumer	2003	1653	1593			22	3268	1937	2.69	3017	6285	2.08
Twiggs	2006	1877	1520	15	7	8	3427	2097	2.63	3440	6867	2.00
Upson	2006	1500	1468	59	6	92	3125	1981	2.58	4340	7465	1.72
Ware	2003	7693	7185	56	3	111	15048	9022	2.67	13780	28828	2.09
Warren	2005	1375	1038	18	3	36	2470	1585	2.56	2907	5377	1.85
Washington	2005	1287	1401	23		19	2730	1599	2.71	2605	5335	2.05
Wayne	2003	2620	3234	23		61	5938	3760	2.58	6016	11954	1.99
Webster	2006	406	239	31			676	463	2.46	1181	1857	1.57
Wheeler	2006	366	758	3	4	46	1177	810	2.45	1069	2246	2.10
White	2005	2080	1798	25	6	114	4042	2502	2.62	3634	7676	2.11
Wilcox	2006	1252	1424	9	5	87	2777	1776	2.56	3580	6357	1.78
Wilkes	2005	21	199	78		22	320	287	2.11	1681	2001	1.19
Wilkinson	2006	1929	2625	28	3	142	4727	2221	3.13	3752	8479	2.26

	Worth	2006	1033	849	52	7		1941		1231	3172	2.58	2517	4458	1.77
Rural Total			265826	239657	4966	630	7259	98	518436	327991	846427	2.58	539916	1058352	1.96
Urban	Bartow	2003	21500	13700	74	3	38		35315	22901	58216	2.54	29042	64357	2.22
	Bibb	2006	27093	26851	75	120	1718	12	55869	29848	85717	2.87	38434	94303	2.45
	Bulloch	2004	3122	5373	90	3	199	1	8788	6118	14908	2.44	11136	19924	1.79
	Carroll	2007	7146	5626	119	10	303	8	13212	7813	21025	2.69	10411	23623	2.27
	Catoosa	2003	1091	1016	4	3	7		2121	1305	3426	2.63	1982	4103	2.07
	Cherokee	2004	9223	8658	225	4	203	1	18314	10691	29005	2.71	13882	32196	2.32
	Clarke	2005	8526	8595	105	68	459		17753	10507	28260	2.69	15754	33507	2.13
	Clayton	2007	21524	19254	26	206	2082	13	43105	24175	67280	2.78	32082	75187	2.34
	Cobb	2004	20565	19073	1849	95	2270	26	43878	22893	66771	2.92	31577	75455	2.39
	Columbia	2005	12536	19872	13	32	344		32797	17196	49993	2.91	22553	55350	2.45
	Coweta	2007	4377	4431	434	14	36	4	9296	5390	14686	2.72	8215	17511	2.13
	Dekalb	2004	57526	56041	145	193	4528	21	118454	63273	181727	2.87	80846	199300	2.47
	Dougherty	2006	2216	2495	312	6	89		5118	3040	8158	2.68	4995	10113	2.02
	Douglas	2007	3879	3320	281		341		7821	4358	12179	2.79	6090	13911	2.28
	Fayette	2007	2406	1799	115	3	347		4670	2692	7362	2.73	3706	8376	2.26
	Floyd	2003	29741	19082	9	15	527		49374	31227	80601	2.58	40779	90153	2.21
	Forsyth	2005	2187	2042	42		189		4460	2512	6972	2.78	3530	7990	2.26
	Fulton	2007	65121	67899	1198	325	7751	187	142481	73763	216244	2.93	97313	239794	2.46
	Glynn	2003	9507	10529	19		243		20298	12072	32370	2.68	17753	38051	2.14
	Gwinnett	2004	22152	21396	824	46	1399	13	45830	24799	70629	2.85	30992	76822	2.48
	Hall	2005	11641	9841	117	47	539	6	22191	13234	35425	2.68	18400	40591	2.21
	Henry	2007	10134	7812	349	37	443		18775	10907	29682	2.72	14268	33043	2.32
	Houston	2006	2595	2674	31	2	151		5453	3055	8508	2.78	4550	10003	2.20
	Liberty	2004	949	4423	61	4	237		5674	4692	10366	2.21	8800	14474	1.64
	Lowndes	2003	9110	8802	130		443		18485	10876	29361	2.70	17474	35959	2.06
	Muscogee	2006	18479	35433	76	80	1528	10	55606	22502	78108	3.47	28662	84268	2.94
	Newton	2004	1085	803	241	3	9		2141	1326	3467	2.61	2310	4451	1.93
	Paulding	2004	1773	1345	106	4	122		3350	1913	5263	2.75	2462	5812	2.36
	Richmond	2005	20691	32913	49	89	3181	34	56957	27334	84291	3.08	41249	98206	2.38
	Rockdale	2004	2977	2289	327	13	101	1	5708	3229	8937	2.77	4612	10320	2.24
	Spalding	2006	1594	1149	118		15	24	2900	1859	4759	2.56	2948	5848	1.98
	Troup	2007	920	677	268	3	47		1915	1173	3088	2.63	1960	3875	1.98
	Walker	2003	1526	1251	86	21	45		2929	1923	4852	2.52	3843	6772	1.76
	Walton	2005	2288	2616	296	13	157		5370	2614	7984	3.05	3615	8985	2.49
	Whitfield	2003	4984	4802	23		19		9828	5490	15318	2.79	6962	16790	2.41
Urban Total			422184	433882	8237	1462	30110	361	896236	488700	1384936	2.83	663187	1559423	2.35
Grand Total			688010	673539	13203	2092	37369	459	1414672	816691	2231363	2.73	1203103	2617775	2.18

# Attachment 4

Sum of GPC poles

County Type	COUNTY	LAST_AUDIT	ILEC	Mandatory Access	Type				Grand Total	All GPC Poles with Mandatory		
					Power	Private	Public	unknown		Total GPC poles with MA	Total Attachers on MA Poles	Average Attaching Entities with MA
Rural	Appling	2004	1297	1588	38	2	37		2962	1588	4550	2.87
	Atkinson	2003	713	1026			9		1748	1026	2774	2.70
	Bacon	2003		2					2	2	4	2.00
	Baker	2006	227	314			2		543	314	857	2.73
	Baldwin	2006	6467	8206	12	4	215		14904	7793	22697	2.91
	Banks	2005	728	1199	5	6	15		1953	1199	3152	2.63
	Barrow	2005	4134	4748	89	8	127		9106	4517	13623	3.02
	Berrien	2003	1920	2328	1		12		4261	2328	6589	2.83
	Bleckley	2006	1448	1781			52		3281	1781	5062	2.84
	Brantley	2003	117	705			6		828	705	1533	2.17
	Brooks	2003	385	456					841	456	1297	2.84
	Bryan	2004	4	549	7		13		573	549	1122	2.04
	Burke	2005	2194	2861	14		64		5133	2861	7994	2.79
	Butts	2007	852	986	80		16		1934	986	2920	2.96
	Calhoun	2006	934	1122			98		2154	1122	3276	2.92
	Camden	2003	239	4134	58		39		4470	4134	8604	2.08
	Candler	2004	867	1289	3	1	6		2166	1289	3455	2.68
	Charlton	2003	603	1219	8		5		1835	1219	3054	2.51
	Chattooga	2003	4645	5557	9		15		10226	5557	15783	2.84
	Clay	2006	379	423			34		836	423	1259	2.98
	Clinch	2003	641	1118	13		1		1773	1118	2891	2.59
	Coffee	2003	717	1901	9		4		2631	1901	4532	2.38
	Colquitt	2003	984	1571			2		2557	1571	4128	2.63
	Cook	2003	814	1073	18				1905	1073	2978	2.78
	Crawford	2006	141	171			14		326	171	497	2.91
	Dade	2003	1146	3688			20		4854	3688	8542	2.32
	Dawson	2005	892	1112	56		18		2078	1111	3189	2.87
	Decatur	2006	3566	4503	5	11	149		8234	4502	12736	2.83
	Dodge	2006	1992	2511	33	2	59		4597	2482	7079	2.85
	Dooly	2006	1172	1953	7	2	52		3186	1953	5139	2.63
	Early	2006	185	233			7		425	233	658	2.82
	Echols	2003	361	550			18		929	550	1479	2.69
	Elbert	2005	762	862	8		3		1635	862	2497	2.90
	Emanuel	2004	2525	3143	23		112	5	5808	3143	8951	2.85

Evans	2004	1178	1670			51	2899	1670	4569	2.74
Franklin	2005	2108	2684	32	2	144	4970	2684	7654	2.85
Glascocock	2005	175	206			15	396	206	602	2.92
Gordon	2003	1760	2061	32	49	4	3906	2061	5967	2.90
Greene	2005	1519	2214	17		46	3796	2214	6010	2.71
Habersham	2005	3516	4187	20	2	89	7814	4157	11971	2.88
Hancock	2006	748	928	10		2	1688	928	2616	2.82
Haralson	2007	3710	3961	19		116	7806	3960	11766	2.97
Harris	2006	3295	4135			19	7449	4135	11584	2.80
Hart	2005	1151	2336	15	3	104	3609	1963	5572	2.84
Heard	2007	907	1010	32		45	1994	1013	3007	2.97
Irwin	2003	577	693			11	1281	693	1974	2.85
Jackson	2005	1212	2490	18	1	20	3741	2490	6231	2.50
Jasper	2005	44	49				93	49	142	2.90
Jeff Davis	2004	1129	1363	32		121	2645	1363	4008	2.94
Jefferson	2005	2810	3195	7	2	93	6107	3195	9302	2.91
Jenkins	2004	751	904			15	1670	904	2574	2.85
Johnson	2004	1011	1308			37	2356	1308	3664	2.80
Jones	2006	2257	2823	18		9	5107	2823	7930	2.81
Lamar	2006	441	580	23		8	1052	580	1632	2.81
Lanier	2003	742	1193			2	1937	1193	3130	2.62
Laurens	2006	4898	6279	78	9	189	11453	5668	17121	3.02
Lee	2006	1157	1651	26	3	74	2911	1651	4562	2.76
Lincoln	2005	61	1369	2		56	1488	1369	2857	2.09
Long	2003	338	831	1		6	1176	831	2007	2.42
Lumpkin	2005	1260	1364	8		9	2641	1364	4005	2.94
Macon	2006	1993	2246		3	83	4325	2234	6559	2.94
Madison	2005	718	1894	13	4	98	2727	1894	4621	2.44
Marion	2006	577	840			10	1427	690	2117	3.07
McDuffie	2005	3171	3723	5		32	6931	3723	10654	2.86
McIntosh	2003	25	1971			5	2001	1971	3972	2.02
Meriwether	2006	3221	4867			76	8164	4173	12337	2.96
Miller	2006	565	638	1	1	4	1209	638	1847	2.89
Mitchell	2006	1573	1909	9	15	872	4378	1909	6287	3.29
Monroe	2006	636	924	62		20	1642	924	2566	2.78
Montgomery	2004	1047	1328	14		10	2399	1328	3727	2.81
Morgan	2005	1117	1319	16		6	2458	1319	3777	2.86
Murray	2003	5575	6320	19	11	6	11931	6320	18251	2.89
Oconee	2005	1075	1289	24		38	2426	1245	3671	2.95
Oglethorpe	2005	266	852	6		16	1140	852	1992	2.34
Peach	2006	1190	1596			38	2824	1596	4420	2.77
Pickens	2003	1876	2536	11		4	4427	2536	6963	2.75

	Pierce	2003	1247	2081			15	3343	2081	5424	2.61	
	Pike	2006	959	1166	3	3	58	2189	1166	3355	2.88	
	Polk	2003	9937	11566			43	21546	11566	33112	2.86	
	Pulaski	2006	1088	1400	21	1	38	2548	1400	3948	2.82	
	Putnam	2006	2754	3322	45		15	6136	3322	9458	2.85	
	Quitman	2006	280	341	1			622	341	963	2.82	
	Rabun	2005	4411	4942	1	1	51	9406	4942	14348	2.90	
	Randolph	2006	1325	1488		7	74	2894	1488	4382	2.94	
	Schley	2006	25	142	16			183	142	325	2.29	
	Seminole	2006	804	1359	10		57	2230	1338	3568	2.67	
	Stephens	2005	3499	4180	24		140	7843	4180	12023	2.88	
	Stewart	2006	671	713			10	1394	713	2107	2.96	
	Sumter	2006	4152	5104	1	41	188	9486	5104	14590	2.86	
	Talbot	2006	857	1278	7		16	2158	1278	3436	2.69	
	Taliaferro	2005	35	291			1	327	291	618	2.12	
	Tattnall	2004	1510	3135	41	2	123	4811	3135	7946	2.53	
	Taylor	2006	504	832	2		12	1350	832	2182	2.62	
	Telfair	2006	2432	3108	1	1	106	5648	3022	8670	2.87	
	Terrell	2006	1565	1869	3		17	3454	1869	5323	2.85	
	Thomas	2006	1663	2239	57	9	54	4022	2168	6190	2.86	
	Tift	2003	4866	8492	18		93	13469	5632	19101	3.39	
	Toombs	2004	3123	3710	5	4	105	6947	3710	10657	2.87	
	Treutlen	2004	696	950		1	29	1676	950	2626	2.76	
	Turner	2003	1317	1593			10	2920	1593	4513	2.83	
	Twiggs	2006	1306	1520	8	2	7	2843	1518	4361	2.87	
	Upson	2006	1029	1468	26	1	71	2595	1468	4063	2.77	
	Ware	2003	5915	7185	14	2	52	13168	7185	20353	2.83	
	Warren	2005	844	1038			34	1916	1038	2954	2.85	
	Washington	2005	1006	1401	7		18	2432	1313	3745	2.85	
	Wayne	2003	2113	3234	19		42	5408	3234	8642	2.67	
	Webster	2006	200	239				439	239	678	2.84	
	Wheeler	2006	323	758	2		41	1124	758	1882	2.48	
	White	2005	1374	1798	16	1	95	3284	1762	5046	2.86	
	Wilcox	2006	913	1424			69	2406	1424	3830	2.69	
	Wilkes	2005	11	199			21	231	199	430	2.16	
	Wilkinson	2006	1470	2625	13		113	4221	1733	5954	3.44	
	Worth	2006	659	849	13		7	1528	849	2377	2.80	
Rural Total			174314	239657	1440	217	5652	5	421285	233014	654299	2.81
Urban	Bartow	2003	12230	13700	51		29	26010	13620	39630	2.91	
	Bibb	2006	22324	26851	49	68	1451	2	50745	25045	75790	3.03
	Bulloch	2004	2480	5373	36		139		8028	5373	13401	2.49

Carroll	2007	4953	5626	86	1	203		10869	5542	16411	2.96
Catoosa	2003	805	1016	4		7		1832	1016	2848	2.80
Cherokee	2004	7047	8658	180	1	181		16067	8464	24531	2.90
Clarke	2005	6409	8595	58	32	365		15459	8272	23731	2.87
Clayton	2007	16869	19254	12	12	1511		37658	19201	56859	2.96
Cobb	2004	16002	19073	1637	9	1882	26	38629	18057	56686	3.14
Columbia	2005	10378	19872	12	1	268		30531	14958	45489	3.04
Coweta	2007	2793	4431	349	7	30	3	7613	3750	11363	3.03
Dekalb	2004	48933	56041	121	36	3930	21	109082	54246	163328	3.01
Dougherty	2006	1730	2495	225	2	69		4521	2494	7015	2.81
Douglas	2007	2934	3320	168		214		6636	3320	9956	3.00
Fayette	2007	1556	1799	55		152		3562	1805	5367	2.97
Floyd	2003	17611	19082	6		389		37088	19082	56170	2.94
Forsyth	2005	1735	2042	17		172		3966	2042	6008	2.94
Fulton	2007	54918	67899	926	50	6709	124	130626	62757	193383	3.08
Glynn	2003	8014	10529	15		174		18732	10529	29261	2.78
Gwinnett	2004	17639	21396	617	6	1245	13	40916	20088	61004	3.04
Hall	2005	8272	9841	55	10	297	5	18480	9696	28176	2.91
Henry	2007	7003	7812	244	7	349		15415	7696	23111	3.00
Houston	2006	2120	2674	13		114		4921	2562	7483	2.92
Liberty	2004	784	4423	21	3	159		5390	4423	9813	2.22
Lowndes	2003	7035	8802	93		303		16233	8733	24966	2.86
Muscogee	2006	16151	35433	12	30	1160	10	52796	19845	72641	3.66
Newton	2004	645	803	100		6		1554	800	2354	2.94
Paulding	2004	1209	1345	97	1	114		2766	1345	4111	3.06
Richmond	2005	17306	32913	27	21	1674	18	51959	22750	74709	3.28
Rockdale	2004	2066	2289	235	4	82	1	4677	2289	6966	3.04
Spalding	2006	908	1149	77		7		2141	1149	3290	2.86
Troup	2007	481	677	157	3	34		1352	637	1989	3.12
Walker	2003	908	1251	34	5	20		2218	1251	3469	2.77
Walton	2005	1752	2616	222	2	155		4747	2021	6768	3.35
Whitfield	2003	3959	4802	20		17		8798	4464	13262	2.97
Urban Total		327959	433882	6031	311	23611	223	792017	389322	1181339	3.03
Grand Total		502273	673539	7471	528	29263	228	1213302	622336	1835638	2.95

# **Attachment 5**



**Attacher Frequency for GPC Poles  
With Foreign Attachments**

<b>Attacher Frequency (includes GPC)</b>	<b>Number of Poles</b>
2	296,078
3	453,154
4	59,043
5	7,108
6	1,116
7	167
8	17
9	8
<b>Grand Total</b>	<b>816,691</b>

# **Attachment 6**

# **Attacher Frequency for GPC Poles With Mandatory Attachments**

<b>Attacher Frequency (includes GPC)</b>	<b>Number of Poles</b>
2	108,473
3	446,687
4	58,763
5	7,107
6	1,114
7	167
8	17
9	8
<b>Grand Total</b>	<b>622,336</b>

# **Attachment 7**

**Georgia Power Company Pole Attachment Rates  
Independent Telephone Companies - 2007 & 2002**

		2007 DATA					2002 DATA				
		ILEC On GPC Poles	GPC Ownership (%)	GPC On ILEC Poles	ILEC Ownership (%)	Total Joint Use Poles	ILEC On GPC Poles	GPC Ownership (%)	GPC On ILEC Poles	ILEC Ownership (%)	Total Joint Use Poles
Parity Goal	Telephone Company										
31 / 69%											
	Alma	169	97.1%	5	2.9%	174	81	77.9%	23	22.1%	104
	Brantley	98	100.0%	0	0.0%	98	138	88.5%	18	11.5%	156
	Bulloch	0		0		0	30	81.1%	7	18.9%	37
	Chickamauga	1064	93.1%	79	6.9%	1143	936	91.5%	87	8.5%	1023
	Citizens	1070	88.4%	140	11.6%	1210	1204	88.7%	154	11.3%	1358
	Coastal	946	82.5%	201	17.5%	1147	904	79.3%	236	20.7%	1140
	Darien	22	88.0%	3	12.0%	25	124	81.0%	29	19.0%	153
	Ellijay	5476	99.0%	53	1.0%	5529	4248	98.6%	62	1.4%	4310
	Fairmount	2558	98.3%	43	1.7%	2601	982	96.3%	38	3.7%	1020
	Frontier	3079	74.5%	1056	25.5%	4135	3133	76.2%	977	23.8%	4110
	Glenwood	9	90.0%	1	10.0%	10	15	93.8%	1	6.3%	16
	Hart	1085	69.1%	485	30.9%	1570	1005	68.5%	463	31.5%	1468
	Hawkinsville	1342	77.5%	389	22.5%	1731	1230	75.1%	408	24.9%	1638
	Interstate	102	100.0%	0	0.0%	102	21	100.0%	0	0.0%	21
	Nelson - Ballground	691	96.9%	22	3.1%	713	625	97.4%	17	2.6%	642
	Pineland	3148	90.1%	345	9.9%	3493	2626	88.8%	332	11.2%	2958
	Plant	2499	91.2%	241	8.8%	2740	2324	91.1%	228	8.9%	2552
	Progressive	1003	95.8%	44	4.2%	1047	750	95.3%	37	4.7%	787
	Public Service	1710	63.9%	964	36.1%	2674	1563	63.4%	902	36.6%	2465
	Quincy	241	94.9%	13	5.1%	254	239	93.4%	17	6.6%	256
	Ringgold	1047	96.4%	39	3.6%	1086	1024	93.5%	71	6.5%	1095
	Standard	10462	92.1%	893	7.9%	11355	10528	93.0%	796	7.0%	11324
	Trenton	1690	84.0%	322	16.0%	2012	1297	83.8%	250	16.2%	1547
	Waverly Hall	1661	99.7%	5	0.3%	1666	1666	99.3%	12	0.7%	1678
	Wilkes	149	48.9%	156	51.1%	305	175	55.0%	143	45.0%	318
	Wilkinson	680	100.0%	0	0.0%	680	2496	97.7%	59	2.3%	2555
44.8 / 55.2%											
	Camden	319	70.0%	137	30.0%	456	638	79.8%	161	20.2%	799
	Pembroke	4	28.6%	10	71.4%	14	9	50.0%	9	50.0%	18
45 / 55%											
	Alltel	108908	93.2%	7887	6.8%	116795	113923	92.8%	8894	7.2%	122817
50 / 50%											
	BellSouth	529971	80.4%	129248	19.6%	659219	518654	79.6%	132815	20.4%	651469
		681203	82.7%	142781	17.3%	823984	672588	82.0%	147246	18.0%	819834

## Historical Georgia Power/BellSouth Joint Use Pole Ownership Information

Year	GPC Poles	% GPC	BST Poles	% BST
2007	529,971	80.4%	129,248	19.6%
2006	528,561	80.3%	129,852	19.7%
2005	523,244	80.1%	129,952	19.9%
2004	517,043	79.9%	130,323	20.1%
2003	517,098	79.6%	132,693	20.4%
2002	518,654	79.6%	132,815	20.4%
2001	512,288	79.3%	133,938	20.7%
2000	507,341	79.0%	134,622	21.0%
1999	474,458	78.5%	129,838	21.5%
1998	470,785	78.5%	129,221	21.5%
1997	469,475	78.4%	129,328	21.6%
1996	467,306	78.3%	129,541	21.7%
1995	463,316	78.2%	129,214	21.8%
1993	462,283	78.2%	129,134	21.8%
1992	459,717	78.0%	129,353	22.0%
1991	390,572	78.7%	105,539	21.3%
1990	387,572	78.6%	105,539	21.4%
1989	384,572	78.5%	105,539	21.5%
1988	381,572	78.3%	105,539	21.7%
1987	375,572	78.1%	105,539	21.9%
1982	368,455	76.9%	110,821	23.1%

# **EXHIBIT 3**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	RM - 11293
Policies Governing Pole Attachments	)	RM - 11303
	)	
	)	

**DECLARATION OF BEN A. BOWEN**

1. My name is Ben A. Bowen. I am currently employed by Gulf Power Company ("Gulf Power") as a Senior Project Services Specialist. My primary job responsibility is administering Gulf Power's joint use program at the corporate level. I have served in my current capacity since 1995 and have been with the company for almost 21 years. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as a Senior Project Services Specialist.
2. Gulf Power is an operating subsidiary of Southern Company that serves more than 427,000 customers in 10 counties in northwest Florida. Gulf Power owns 246,434 distribution poles, 150,723, of which are impacted by third-party attachments.
3. Gulf Power has 3 joint use agreements with ILECs in its service area. The major ILEC in Gulf Power's service area is AT&T (formerly Bellsouth). This relationship is nearly 100 years old and dates back to October 1, 1915, between our predecessors and is renegotiated from time to time. By way of example, Gulf Power recently completed (this year) a 14-month negotiation with AT&T for a new joint use agreement. This negotiation was conducted at arm's-length and concluded this year.



4. Our major joint use agreements are based on the concept of parity, which means neither party pays the other a per pole “adjustment rate”. Gulf Power’s contractual parity with AT&T is 55% (Gulf Power) to 45% (AT&T). The actual relative pole ownership between Gulf Power and AT&T is 60% to 40%, based on 2006 audit results. Relative ownership has changed little since 2001. Gulf Power’s ratio with AT&T (then Bellsouth) in 2001 was 58% (Gulf Power) to 42% (AT&T). Gulf Power is attached to 63,048 ILEC poles (including Embarq and GTC, Gulf Power’s other two ILEC partners). Gulf Power does not jointly own any poles with any of its ILEC partners.

5. Gulf Power has different joint use relationships with each of its ILEC partners. Though there are many similarities, there are also some important differences. For example, the contractual parity with our second largest ILEC, Embarq, is 50/50 (versus 55/45 for AT&T). The adjustment rates in these two agreements differ (and are calculated to capture different costs). The liability allocations also differ. The AT&T agreement states: “It is the express intent of the parties to this Agreement that each party’s liability to the other as indemnitor shall be commensurate with that party’s degree of negligence in situations involving the joint or concurrent negligence of both parties.” The Embarq agreement provides for losses arising out of jointly used poles to be shared 54% (Gulf) and 46% (Embarq).

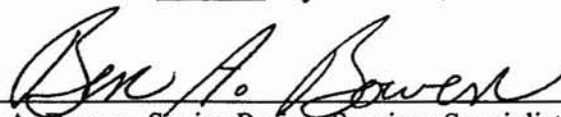
6. Gulf Power typically conducts a system joint use audit every five years. The audit we conducted in 2006 surveyed every Gulf Power pole with third-party attachments. I was intimately involved in managing this audit. Based on the results of this audit, the average distribution pole in Gulf Power’s system has 2.06 attaching entities (including Gulf Power). If the subset of poles used to determine the average is limited to only those poles with one or more third-party attachments, the average number of attaching entities is 2.74 (including Gulf Power).

However, for the one attacher in our system we bill at the telecom rate, we currently use an average number of attaching entities derived solely from poles in the Gulf Power service areas where that attacher maintains attachments. This results in an average number of attaching entities of 3.4. This dilutes cost recovery under the telecom formula because the poles to which the telecom is attached are in highly developed areas and are generally taller, which makes them costlier to install and maintain.

7. As part of its FPSC-required Storm Hardening Plan, Gulf Power proposed an overlashing notification protocol that would enable it to perform pole strength and loading analyses prior to new burdens being placed on a pole. The four largest cable television attachers in Gulf Power's service territory, working through the Florida Cable Telecommunications Association, reached a negotiated Stipulation with Gulf Power addressing the overlashing notification protocol. However, Gulf Power recently learned that its largest cable television attacher was overlashing without notification since shortly after executing the Stipulation, impacting more than 500 poles in Gulf's system. We believe, after meeting with the attacher on March 6, 2008, that the situation will be resolved.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 17<sup>th</sup> day of March, 2008.

  
Ben A. Bowen, Senior Project Services Specialist  
Gulf Power Company

# **EXHIBIT 4**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	RM-11293
	)	
	)	RM-11303

**DECLARATION OF DAVID B. SIMMONS, P.E.**

1. My name is David B. Simmons. I am a Professional Engineer licensed in the State of Mississippi. I am currently employed by Mississippi Power Company ("Mississippi Power") as the Engineering Services Manager. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as Engineering Services Manager for Mississippi Power.
2. Mississippi Power is an operating subsidiary of Southern Company. Mississippi Power serves 184,937 customers in 23 counties in southeastern Mississippi. Mississippi Power owns 156,355 distribution poles, 72,926 of which are impacted by third party attachments.
3. I have been the Engineering Services Manager for Mississippi Power for 12 years, and have been with the company for a total of 27 years. My job responsibilities as Engineering Services Manager include managing joint use and pole attachment matters for Mississippi Power.
4. Mississippi Power has a joint use agreement with one ILEC in its service area – AT&T (known as BellSouth until 2007). The AT&T joint use agreement is based on parity, which

means each party is supposed to own a certain percentage of jointly used poles. Our contractual parity in the AT&T joint use agreement is 57.5% (Mississippi Power) and 42.5% (AT&T). The purpose of parity is to achieve equitable sharing of the costs of pole infrastructure construction and ownership. When one party is out of parity (meaning it does not own its contractually required share of jointly used poles), that party pays a per pole "adjustment rate." The adjustment rate is designed to offset the additional costs of ownership borne by the party owning more than its contractual share of jointly used poles. The joint use agreement is not a space "rental" agreement at all.

5. Between 1990 and 1994, Mississippi Power sold 16,603 poles to AT&T (then BellSouth) to restore the parties to parity. The 1993 audit and the 1994 pole sale resulted in relative ownership of 56.2% (Mississippi Power) and 43.8% (AT&T). By the 1999 audit, the relative ownership had changed to 67% (Mississippi Power) and 33% (AT&T).

6. Based on our most recent audit, conducted in 2004, the relative pole ownership with AT&T is 65.8% (Mississippi Power) to 34.2% (AT&T). Mississippi Power is currently attached to 40,131 AT&T poles. Mississippi Power does not own any poles jointly with AT&T. As set forth above, we contract to use each others poles.

7. Mississippi Power re-negotiated its joint use agreement with AT&T in 2005 (with an execution date of early 2006). This was an arm's-length negotiation. If either party had more bargaining power than the other, it was AT&T. The joint use agreement, as it existed before 2005, provided for an adjustment rate formula that yielded roughly half what it should have been to accomplish cost recovery, as contemplated by the joint use agreement. Mississippi Power ultimately had to pursue this change through litigation because AT&T was in no hurry to change.

8. From January 2006 through January 2008, Mississippi Power made written request to AT&T to either set or replace 1,353 poles throughout our mutual service territories in an effort to work toward meeting contractual parity. AT&T accepted only 214 (less than 16%) of these requests. The chart attached hereto as Exhibit A summarizes those requests along with the number of acceptances and rejections.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 7<sup>th</sup> day of March, 2008.

A handwritten signature in cursive script, reading "David B. Simmons", is written over a horizontal line.

David B. Simmons, P.E.  
Engineering Services Manager  
Mississippi Power Company

# **EXHIBIT A**

## MPC/BST Joint Use E-Mail Communication Summary

January 2006

<b>From MPC</b>	<b>Offer to Let BST Set Pole</b>	<b>Request BST Change Out Defective Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>Other</b>
<b>Coast</b>	17	1	6	<b>Coast</b>	1	6	1	5
<b>Pine Belt</b>	1	0	0	<b>Pine Belt</b>	0	0	0	0
<b>Meridian</b>	0	0	2	<b>Meridian</b>	0	0	0	0
<b>Totals</b>	18	1	8	<b>Totals</b>	1	6	1	5

February 2006

<b>From MPC</b>	<b>Offer to Let BST Set Pole</b>	<b>Request BST Change Out Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective or Leaning Pole</b>	<b>Other</b>
<b>Coast</b>	21	1	1	<b>Coast</b>	5	16	0	7
<b>Pine Belt</b>	9	2	2	<b>Pine Belt</b>	3	2	2	1
<b>Meridian</b>	0	2	0	<b>Meridian</b>	0	0	1	0
<b>Totals</b>	30	5	3	<b>Totals</b>	8	18	3	8



**March 2006**

<b>From MPC</b>	<b>Offer to Let BST Set Pole</b>	<b>Request BST Change Out Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace their Defective Pole</b>	<b>Other</b>
<b>Coast</b>	32	2	6	<b>Coast</b>	12	20	2	0	1
<b>Pine Belt</b>	1	4	1	<b>Pine Belt</b>	0	0	0	1	1
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	33	6	7	<b>Totals</b>	12	20	2	1	2

**April 2006**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace their Defective Pole</b>	<b>Other</b>
<b>Coast</b>	32	0	4	<b>Coast</b>	9	11	0	0	0
<b>Pine Belt</b>	1	1	4	<b>Pine Belt</b>	1				
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	33	1	8	<b>Totals</b>	10	11	0	0	0

### May 2006

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	34	3	2	<b>Coast</b>	13	21	0	1	1
<b>Pine Belt</b>	2	3	1	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	0	0	1	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	36	6	4	<b>Totals</b>	13	21	0	1	1

### June 2006

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	37	3	7	<b>Coast</b>	2	29	0	0	3
<b>Pine Belt</b>	1	3	0	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	1	0	0	<b>Meridian</b>	0	1	0	0	0
<b>Totals</b>	39	6	7	<b>Totals</b>	2	30	0	0	3

**July 2006**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	45	2	0	<b>Coast</b>	1	40	1	0	0
<b>Pine Belt</b>	1	3	0	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	46	5	0	<b>Totals</b>	1	36	1	0	0

**August 2006**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	36	10	2	<b>Coast</b>	2	20	3	0	3
<b>Pine Belt</b>	2	5	3	<b>Pine Belt</b>	0	1	0	0	0
<b>Meridian</b>	0	0	1	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	38	15	6	<b>Totals</b>	2	21	3	0	3

**September 2006**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	34	6	3	<b>Coast</b>	6	9	0	0	1
<b>Pine Belt</b>	0	6	0	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	34	12	3	<b>Totals</b>	6	9	0	0	1

**October 2006**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	23	14	1	<b>Coast</b>	3	19	2	0	0
<b>Pine Belt</b>	2	6	1	<b>Pine Belt</b>	0	2	0	0	0
<b>Meridian</b>	0	2	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	25	22	2	<b>Totals</b>	3	17	2	0	0

### November 2006

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	17	1	2	<b>Coast</b>	4	5	0	0	0
<b>Pine Belt</b>	6	0	5	<b>Pine Belt</b>	0	1	0	0	0
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	23	1	7	<b>Totals</b>	4	5	0	0	0

### December 2006

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	34	2	1	<b>Coast</b>	4	16	0	0	3
<b>Pine Belt</b>	1	9	0	<b>Pine Belt</b>	0	0	0	0	1
<b>Meridian</b>	0	0	1	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	35	11	2	<b>Totals</b>	4	16	0	0	4

**January 2007**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	34	4	2	<b>Coast</b>	2	15	0	0	0
<b>Pine Belt</b>	2	44	1	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	0	0	1	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	36	48	4	<b>Totals</b>	2	15	0	0	0

**February 2007**

<b>From MPC</b>	<b>MPC Offers to Let BST Set Pole</b>	<b>MPC Request BST Change Out their Defective or Leaning Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Pole Set Offer</b>	<b>BST Declines Pole Set Offer</b>	<b>BST Agrees to Replace Defective Pole</b>	<b>BST Asks MPC to Replace MPC Defective Pole</b>	<b>Other</b>
<b>Coast</b>	34	4	6	<b>Coast</b>	1	14	1	0	1
<b>Pine Belt</b>	2	18	1	<b>Pine Belt</b>	1	0	0	0	1
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	36	22	7	<b>Totals</b>	1	3	1	0	2



### March 2007

<b>From MPC</b>	<b>MPC Offers to Let BST Set New Pole</b>	<b>MPC Offers to Let BST Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Offer to Set New Pole</b>	<b>BST Declines Offer to Set New Poles</b>	<b>BST Accepts Offer to Replace Defective Pole or Set Taller Pole</b>	<b>BST Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	38	19	0	<b>Coast</b>	2	23	5	0	0
<b>Pine Belt</b>	1	9	1	<b>Pine Belt</b>	0	1	0	0	0
<b>Meridian</b>	2	1	2	<b>Meridian</b>	0	2	1	0	0
<b>Totals</b>	41	29	3	<b>Totals</b>	2	11	6	0	0

### April 2007

<b>From MPC</b>	<b>MPC Offers to Let BST Set New Pole</b>	<b>MPC Offers to Let BST Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Offer to Set New Pole</b>	<b>BST Declines Offer to Set New Poles</b>	<b>BST Accepts Offer to Replace Defective Pole or Set Taller Pole</b>	<b>BST Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	42	7	2	<b>Coast</b>	2	27	0	1	0
<b>Pine Belt</b>	6	9	1	<b>Pine Belt</b>	0	5	0	0	0
<b>Meridian</b>	4	0	0	<b>Meridian</b>	1	2	0	0	0
<b>Totals</b>	52	16	3	<b>Totals</b>	3	34	0	1	0

**May 2007**

<b>From MPC</b>	<b>MPC Offers to Let BST Set New Pole</b>	<b>MPC Offers to Let BST Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Offer to Set New Pole</b>	<b>BST Declines Offer to Set New Poles</b>	<b>BST Accepts Offer to Replace Defective Pole or Set Taller Pole</b>	<b>BST Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	33	4	15	<b>Coast</b>	6	22	1	2	2
<b>Pine Belt</b>	2	24	2	<b>Pine Belt</b>	0	0	0	0	1
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	35	28	17	<b>Totals</b>	6	22	1	2	3

**June 2007**

<b>From MPC</b>	<b>MPC Offers to Let BST Set New Pole</b>	<b>MPC Offers to Let BST Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Offer to Set New Pole</b>	<b>BST Declines Offer to Set New Poles</b>	<b>BST Accepts Offer to Replace Defective Pole or Set Taller Pole</b>	<b>BST Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	46	8	5	<b>Coast</b>	2	38	8	0	3
<b>Pine Belt</b>	1	21	3	<b>Pine Belt</b>	0	2	0	0	0
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	47	29	8	<b>Totals</b>	2	40	8	0	3



### July 2007

<b>From MPC</b>	<b>MPC Offers to Let BST Set New Pole</b>	<b>MPC Offers to Let BST Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Offer to Set New Pole</b>	<b>BST Declines Offer to Set New Poles</b>	<b>BST Accepts Offer to Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>BST Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	46	19	2	<b>Coast</b>	10	36	7	0	0
<b>Pine Belt</b>	1	5	1	<b>Pine Belt</b>	1	0	0	0	0
<b>Meridian</b>	0	0	0	<b>Meridian</b>	0	0	0	0	0
<b>Totals</b>	47	24	3	<b>Totals</b>	11	36	7	0	0

### August 2007

<b>From MPC</b>	<b>MPC Offers to Let BST Set New Pole</b>	<b>MPC Offers to Let BST Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From BST</b>	<b>BST Accepts Offer to Set New Pole</b>	<b>BST Declines Offer to Set New Poles</b>	<b>BST Accepts Offer to Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>BST Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	39	10	4	<b>Coast</b>	15	18	6	0	1
<b>Pine Belt</b>	4	21	1	<b>Pine Belt</b>	1	2	0	0	0
<b>Meridian</b>	1	1	6	<b>Meridian</b>	0	0	0	0	2
<b>Totals</b>	44	32	11	<b>Totals</b>	16	17	6	0	3

### September 2007

<b>From MPC</b>	<b>MPC Offers to Let AT&amp;T Set New Pole</b>	<b>MPC Offers to Let AT&amp;T Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From AT&amp;T</b>	<b>AT&amp;T Accepts Offer to Set New Pole</b>	<b>AT&amp;T Declines Offer to Set New Poles</b>	<b>AT&amp;T Accepts Offer to Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>AT&amp;T Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	49	2	2	<b>Coast</b>	18	17	2	1	0
<b>Pine Belt</b>	4	7	0	<b>Pine Belt</b>	0	1	0	0	0
<b>Meridian</b>	1	0	0	<b>Meridian</b>	1	0	0	0	0
<b>Totals</b>	54	9	2	<b>Totals</b>	19	18	2	1	0

### October 2007

<b>From MPC</b>	<b>MPC Offers to Let AT&amp;T Set New Pole</b>	<b>MPC Offers to Let AT&amp;T Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From AT&amp;T</b>	<b>AT&amp;T Accepts Offer to Set New Pole</b>	<b>AT&amp;T Declines Offer to Set New Poles</b>	<b>AT&amp;T Accepts Offer to Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>AT&amp;T Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	65	1	3	<b>Coast</b>	15	30	1	0	0
<b>Pine Belt</b>	0	10	0	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	0	3	1	<b>Meridian</b>	0	0	1	0	0
<b>Totals</b>	65	14	4	<b>Totals</b>	14	31	2	0	0

### November 2007

<b>From MPC</b>	<b>MPC Offers to Let AT&amp;T Set New Pole</b>	<b>MPC Offers to Let AT&amp;T Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From AT&amp;T</b>	<b>AT&amp;T Accepts Offer to Set New Pole</b>	<b>AT&amp;T Declines Offer to Set New Poles</b>	<b>AT&amp;T Accepts Offer to Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>AT&amp;T Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	43	0	1	<b>Coast</b>	4	26	0	0	0
<b>Pine Belt</b>	0	5	0	<b>Pine Belt</b>	0	0	0	0	0
<b>Meridian</b>	0	1	1	<b>Meridian</b>	0	0	0	0	2
<b>Totals</b>	43	6	2	<b>Totals</b>	4	26	0	0	2

### December 2007

<b>From MPC</b>	<b>MPC Offers to Let AT&amp;T Set New Pole</b>	<b>MPC Offers to Let AT&amp;T Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>	<b>From AT&amp;T</b>	<b>AT&amp;T Accepts Offer to Set New Pole</b>	<b>AT&amp;T Declines Offer to Set New Poles</b>	<b>AT&amp;T Accepts Offer to Replace Pole or Replace Defective Pole or Set Taller Pole</b>	<b>AT&amp;T Declines Offer to Replace Defective Pole or Set Taller Pole</b>	<b>Other</b>
<b>Coast</b>	44	9	3	<b>Coast</b>	2	23	4		1
<b>Pine Belt</b>	1	2	0	<b>Pine Belt</b>	0	1	0	0	0
<b>Meridian</b>	0	2	2	<b>Meridian</b>	0	0	2	0	1
<b>Totals</b>	45			<b>Totals</b>					

# **EXHIBIT 5**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	WC Docket No. 07-245
	)	
	)	RM-11293
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	RM-11303
Policies Governing Pole Attachments	)	
	)	

**DECLARATION OF CANDLER J. GINN**

1. My name is Candler J. Ginn. I am the Distribution Resources and Service Project Manager of Georgia Power Company ("Georgia Power"), a wholly owned subsidiary of Southern Company. My business address is 829 Jefferson Street, Atlanta, Georgia 30318. I am over 18 years of age and have personal knowledge of all matters set forth herein.

2. As part of my duties as Distribution Resources and Service Project Manager, I manage the make ready process for attachments on Georgia Power facilities. I have been employed in this position for 4.5 years.

3. In my role as Distribution Resources and Service Project Manager, I also customarily handle requests from wireless telecommunications providers seeking attachments to Georgia Power poles. In handling these requests, it is my responsibility to investigate the specific type of wireless equipment the wireless telecommunications provider requests to install on our poles. Once I have determined this, it is then my responsibility to manage the make ready process to ensure the pole on which this attachment will be placed can safely and reliably carry the additional load demands of the wireless equipment.

4. It has been my experience that the equipment wireless telecommunications companies attach to Georgia Power poles can include an antenna or antenna clusters, communications cabinets on or at the base of poles, coaxial and fiber cables connecting antennas to the cabinet, other related equipment, etc . The antennas and equipment used by wireless telecommunications companies that have attached to Georgia Power poles have come in a variety of weights, sizes, and shapes.

5. It has been my experience that the variety of wireless attachments creates different problems and challenges for the make-ready process than traditional wireline attachments, and often there are additional make-ready costs to accommodate wireless attachments.

6. Georgia Power has collected photographs of some equipment wireless telecommunications providers have attached to Georgia Power owned poles in the past. See Attachment 1. These photographs accurately portray examples of the physical equipment that has been installed on Georgia Power poles in the past.

I declare under penalty of perjury that the statements contained in this Declaration are true and correct.

Executed on March 06, 2008.

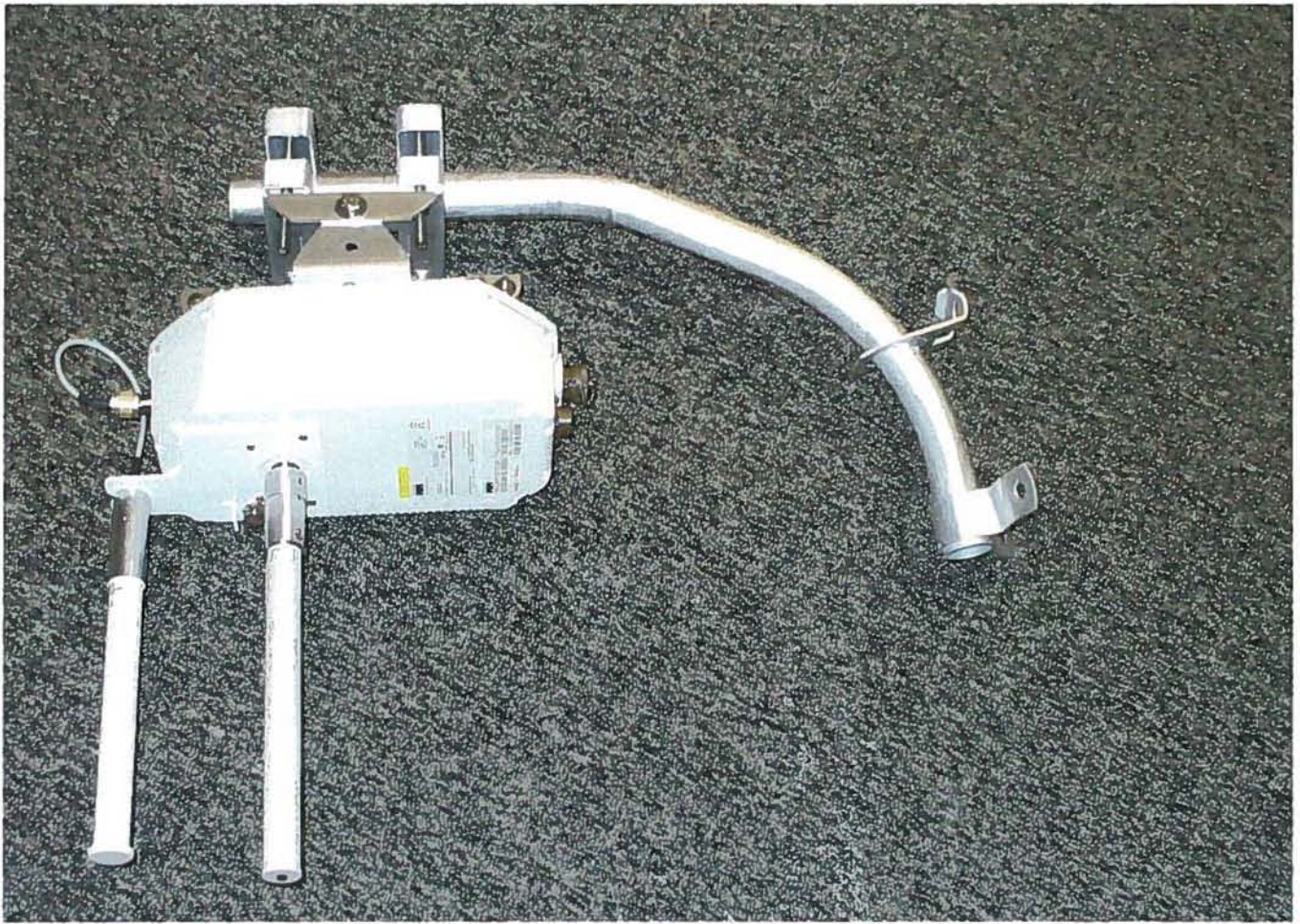
  
Candler J. Ginn

# **Attachment 1**

















# **EXHIBIT 6**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	RM - 11293
Policies Governing Pole Attachments	)	RM - 11303
	)	
	)	

DECLARATION OF KEITH L. REESE, P.E.

1. My name is Keith L. Reese. I am a Principal Engineer for Georgia Power Company ("Georgia Power") and a Professional Engineer licensed in the State of Georgia. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as Principal Engineer for Georgia Power Company ("Georgia Power").
2. I have been employed by Georgia Power as Principal Engineer for four years, and have been with the company for a total of over twenty-eight years. I am responsible for Georgia Power's overhead distribution designs and specifications, NESC compliance, and I assist with engineer training. Georgia Power is an operating subsidiary of Southern Company. I am a member of Southern Company's Overhead Distribution Design Committee, Engineering Workstation Committee, and NESC / Arc Flash Committee. I also am a member of the following industry committees: Southeastern Electric Exchange NESC Committee (Chair of Grounding Subcommittee); Southeastern Electric Exchange Overhead Distribution Committee; IEEE NESC C2 Subcommittee 4 (Overhead Lines, Clearances); IEEE NESC C2 Subcommittee 2 (Grounding – Principal Member).

3. My declaration addresses certain specific issues impacting the safety and reliability of the distribution systems owned by Georgia Power, Alabama Power, Gulf Power, and Mississippi Power (collectively, the "Operating Companies"). I offer this testimony in support of the initial comments filed by the Operating Companies in response to the FCC's Pole Attachment Notice of Proposed Rulemaking, WC Docket 07-245.

4. Joint use construction standards are a subset of overhead distribution construction standards, and Southern Company has established its own set of standards for both. Southern Company's standards are dynamic because its Operating Companies must take into account area-specific variables in constructing and maintaining their pole networks. The adoption, by the FCC, of any presumptions or rules of general applicability addressing engineering and construction would negatively impact the Operating Companies' ability and responsibility to ensure the safety and reliability of their pole networks because they must take into consideration factors such as wind, soil conditions, average rainfall, frequency of lightning, construction materials, and other facilities when setting and enforcing their engineering standards.

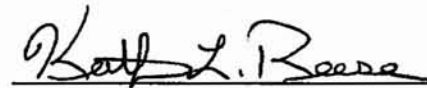
5. Different utilities take different factors into consideration when determining whether to allow pole top antennas. Portions of the Operating Companies' networks, for example, are located in a lightning prone and wind prone area of the country. Because of this, adding pole top attachments could destabilize and threaten the safety and reliability of the Operating Companies' poles and lines.

6. Further, a wireless device installed at the top of a distribution pole may provide a path to ground. This would reduce the Basic Insulation Level ("BIL") of the system and increase the likelihood of customer outages due to lightning. Moreover, some wireless devices can emit a RF

signal with sufficient power to be hazardous to people. Finally, during installation and maintenance of wireless devices located in the supply space on a distribution pole, some temporary modifications to the protective devices for that location would have to be made for safety. This would also increase the likelihood of customer outages in the event of a momentary fault on the system.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 7<sup>th</sup> day of March, 2008.

A handwritten signature in dark ink, appearing to read "Keith L. Reese", is written over a horizontal line.

Keith L. Reese, P.E.